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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 29

JAMES B. GULLY, STATE TAX COLLECTOR FOR THE STATE OF MISSISSIPPI, PETITIONER,

vs.

FIRST NATIONAL BANK IN MERIDIAN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 10, 1936.

CERTIORARI GRANTED MAY 18, 1936.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN CHANCERY COURT OF LAUDERDALE COUNTY

JAMES B. GULLY, State Tax Collector,

versus

FIRST NATIONAL BANK IN MERIDIAN

BILL OF COMPLAINT—Filed Aug. 1, 1933

To the Honorable A. B. Amis, Sr., Chancellor:

Now comes James B. Gully, State Tax Collector, by his [fol. 2] attorneys, and humbly complaining of the First National Bank in Meridian would show unto the Court the following facts, to-wit:

1st. That your complainant, James B. Gully, is the duly elected, qualified and acting State Tax Collector of the State of Mississippi, and as such is authorized to sue for and recover in his own name all debts and taxes due said State of Mississippi or any subdivision or municipal corporation thereof, and especially the debts and taxes hereinafter mentioned.

2nd. That the defendant, First National Bank in Meridian is a national banking association organized and existing under the laws of the United States of America and domiciled in the City of Meridian, Lauderdale County, Mississippi.

3rd. That the City of Meridian was on and prior to January 1st, 1930, and still is a municipal corporation duly organized and existing under the laws of the State of Mississippi and was during the whole of the year 1930 duly authorized by law and its charter to levy and collect taxes upon all the taxable property in said city for each and all of the purposes hereinafter set forth.

4th. That the County of Lauderdale was on and prior to January 1st, 1930, and still is a political subdivision of the

State of Mississippi and was during the whole of the year 1930 duly authorized by law to levy and collect taxes upon all the taxable property in said county for each and all of the purposes hereinafter set forth.

5th. That the City of Meridian together with certain additional and adjacent territory did on and prior to January 1st, 1930, and still does constitute by a law a municipal separate school district known as the Meridian Separate [fol. 3] School District, which municipal separate school district, acting by and through the duly constituted officers of the City of Meridian, was during the whole of the year 1930 duly authorized to levy and collect taxes upon all of the taxable property in said municipal separate school district for each and all of the purposes hereinafter set forth.

6th. That the First National Bank of Meridian was on and prior to the first day of January, 1930, and throughout the entire year 1930 and until January 13th, 1931, a national banking association organized and existing under the laws of the United States of America and was during all of said time domiciled in and maintained its principal and only place of business within the said City of Meridian, and within said Meridian Separate School District, and within Lauderdale County, in the State of Mississippi.

7th. That during the year 1930 the said First National Bank of Meridian was subject to taxation by the State of Mississippi, by the County of Lauderdale, by the City of Meridian and by the Meridian Separate School District upon its capital stock, surplus and undivided profits in the manner provided by the laws of the State of Mississippi and the charter and ordinances of said City.

8th. That during the year 1930 and in strict compliance with the laws of the State of Mississippi the First National Bank of Meridian, acting through its proper officers, made due and legal report or return to the Tax Assessors of Lauderdale County, Mississippi, of the number and amount of all the shares of its capital stock paid in and of the sum of all undivided profits, surplus and accumulation of every sort constituting a part of the assets of said First National Bank of Meridian, excluding its real estate, upon which return the Tax Assessor of Lauderdale County proceded ac- [fol. 4] cording to law to assess the said capital stock, sur-

plus and undivided profits to said First National Bank of Meridian for the State and County taxes for the year 1930, said assessment being made upon page 12 of the Personal Assesment Roll of Lauderdale County for the year 1930 and being in words and figures as follows, to-wit:

Page 12

Name—Bank, First

Bank's capital stock, surplus and undivided profits, less book value of real estate	$540,135.00
Total Valuation of all Personal Property	540,135.00

9th. That thereafter and within the time prescribed by law the said personal Assessment Roll of Lauderdale County for the year 1930, after first being duly sworn to by said Assessor in the form prescribed by law, was duly filed by said Assessor with the Clerk of the Board of Supervisors of Lauderdale County, Mississippi.

10th. That thereafter, after due and lawful notice given and published, and after fully and strictly complying with each and all of the requirements of law the said Board of Supervisors of Lauderdale County, Mississippi, did in lawful meeting, at the time and place and in the manner prescribed by law approve and ratify said Personal Assessment Roll of Lauderdale County for the year 1930, including therein the assessment of the capital stock, surplus and undivided profits of the First National Bank of Meridian. A true and correct copy of the order of said Board of Supervisors approving said Assessment Roll as same appears of Record in Vol. 19 at page 14 of the minutes of said Board of Supervisors is hereto attached, marked Exhibit "A" and made a part hereof, and also by a further order in Min. [fol. 5] Book 19, page 50, copy being attached hereto as Exhibit "A-1."

11th. That thereafter in due course of law a copy of said Personal Assessment Roll was filed with the State Tax Commission of the State of Mississippi and was in due course approved by said State Tax Commission on November 5th, 1930, a true and correct copy of the order of approval being hereto attached, marked Exhibit "B" and made a part hereof.

12th. That thereafter and during the month of November, 1930, the said Board of Supervisors of Lauderdale County did, in lawful meeting, at the time and place and in the manner prescribed by law, levy certain ad valorem taxes for the year 1930 upon all the taxable property in the City of Meridian for the purposes and in the amounts as follows, to-wit:

Fund or purpose	Rate in mills per dollar
General County Fund	6.00
Road Fund	2.00
East Miss. Junior College	.10
Bridge & Culvert Interest & Sinking Fund	.40
Funding Bonds, Interest & Sinking Fund	.50
Loan Warrant Fund	.40
Tuberculosis Hospital	.50
Road Bonds, Interest & Sinking Fund	1.10
Road Improvement Bonds, Interest & Sinking Fund	.25
Good Roads Dist. No. 1—Interest & Sinking Fund	1.75
Good Roads Dist. No. 1—Maintenance Fund	3.00

thus making a total levy against the taxable property in said City of Meridian of sixteen mills per dollar. A true and correct copy of said order of the Board of Supervisors levying said taxes being hereto attached, marked Exhibit "C" and made a part hereof.

[fol. 6] 13th. That the Legislature of the State of Mississippi did at the regular session in 1930 levy a tax for the year 1930 of eight mills upon the dollar against all the taxable property in said State, said levy being made by Chapter 161 of the laws of Mississippi of 1930 approved on the 17th day of May, 1930.

14th. That by reason of all of the foregoing there became due the State of Mississippi the sum of Four Thousand Three Hundred Twenty One and 08/100 Dollars as taxes for the year 1930 against said capital stock, surplus and undivided profits of said First National Bank of Meridian.

15th. That also by reason of all of the foregoing there became due the County of Lauderdale the sum of Eight Thousand Six Hundred Forty Two and 16/100 Dollars as taxes for the year 1930 against said capital stock, surplus

and undivided profits of said First National Bank of Meridian.

16th. That said taxes, due both the State of Mississippi and the County of Lauderdale, were due by the shareholders of the said First National Bank of Meridian, but said First National Bank of Meridian was, by law, liable to pay said taxes as the agent of each of its shareholders and was authorized to pay same out of their individual profit account, or to charge same to their expense account or to any other account which said shareholders might have with said Bank, all in proportion to their ownership.

17th. That under the law the said taxes so due the State of Mississippi and the County of Lauderdale became and were debts due by the several shareholders of said First National Bank of Meridian to the said State of Mississippi and County of Lauderdale.

[fol. 7] 18th. That it became and was the duty of said First National Bank of Meridian to pay the amount of said taxes to the Sheriff and Tax Collector of Lauderdale County on or before the 1st day of December 1930 and to charge same to the individual profit accounts of its said shareholders, or to their expense accounts or to any other accounts said shareholders might have had with said Bank.

19th. That during the period from January 1st, 1930, to January 13th, 1931, and also during the period from April 1st, 1930, to January 13th, 1931, and also during the period from December 1st, 1930, to January 13th, 1931, the said First National Bank of Meridian had in its possession and under its control divers large sums of money belonging to its said shareholders said money being both dividends declared upon the said shares as well as money on deposit in said bank to the separate accounts of said shareholders. The exact amount of such dividends and deposits is unknown to your complainant, but on information which he believes to be true, he avers that same was as to each and every of said shareholders largely in excess of each shareholders prorata portion of said taxes due the State of Mississippi and the County of Lauderdale as hereinbefore set forth.

20th. That notwithstanding its duty to pay the amount of said state and county taxes, to-wit: the sum of Twelve

Thousand Nine Hundred Sixty Three and 24/100 Dollars to the Sheriff and Tax Collector of Lauderdale County on or before December 1st, 1930, out of the funds and moneys of its shareholders then and theretofore in its possession, the said First National Bank of Meridian wholly failed, neglected and refused so to do and thereby became and was liable and indebted, directly and primarily, unto the said State of Mississippi and the County of Lauderdale for the full amount of said taxes.

[fol. 8] 21st. That during the year 1930, in strict compliance with the laws of the State of Mississippi and the Charter, Charter Amendments and Ordinances of the City of Meridian, the First National Bank of Meridian, acting through its proper officers, made due and legal report or return to the Tax Assessor and Collector of the City of Meridian, Mississippi, of the number and amount of all the shares of its capital stock paid in and of the sum of all undivided profits, surplus and accumulation of every sort constituting a part of the assets of said First National Bank of Meridian, excluding its real estate, upon which return the City Tax Assessor and Collector of the City of Meridian proceeded according to law to assess said capital stock, surplus and undivided profits to said First National Bank of Meridian for taxes due the City of Meridian and the Meridian Separate School District for the year 1930, said assessment being made upon page — of the Assessment Roll of the City of Meridian for the year 1930 in words and figures as follows, to-wit:

First National Bank:

2600 shares capital stock	$260,000.00
Surplus and Undivided Profits	313,890.00
	$573,890.00
Less Real Estate	33,700.00
	$540,190.00
Total Value of all Personal Property	$540,190.00
Total Tax on same	$ 13,504.75

22nd. That thereafter and within the time prescribed by law and the Charter, Charter Amendments and Ordinances

of the said City of Meridian, the said personal assessment roll of the City of Meridian for the year 1930, after first [fol. 9] being duly sworn to by the said City Tax Assessor and Collector in the form prescribed by law and the said Charter, Charter Amendments and Ordinances, was duly filed by the said City Tax Assessor and Collector with the City Clerk and Treasurer of the City of Meridian, Mississippi.

23rd. That thereafter, after due and lawful notice given and published and after fully and strictly complying with each and all of the requirements of law and said Charter, Charter Amendments and Ordinances, the Board of Mayor and Councilmen in the said City of Meridian, Mississippi, did, in lawful meeting at the time and place and in the manner prescribed by law and said Charter, Charter Amendments and Ordinances, approve and ratify said Personal Assessment Roll of the City of Meridian, Mississippi for the year 1930, including therein the assessment of the capital stock, surplus and undivided profits of the First National Bank of Meridian. A true and correct copy of the order of said Board of Mayor and Councilmen approving the said Assessment Roll as same appears of record in Ordinance Book No. 7 at page 519 of the Records of said Board of Mayor and Councilmen is hereto attached, marked Exhibit "C-1" and made a part hereof.

24th. That thereafter on the 28th day of October, 1930, the said Board of Mayor and Councilmen of the City of Meridian did, in lawful meeting at the time and place and in the manner prescribed by law and the said Charter, Charter Amendments and ordinances, levy certain ad valorem taxes for the said City of Meridian for the year 1930 upon all of the taxable property in the City of Meridian, Mississippi, in the total amount of 15 mills upon each dollar, said levy being made by an ordinance No. 751 and entitled, "An Ordinance to Provide a Revenue for the City of Meridian for the Fiscal Year 1930," passed by the [fol. 10] councilmen and approved by the Mayor the 28th day of October, 1930, a true and correct copy of which is hereto attached, marked Exhibit "D" and made a part hereof and is here referred — for a detailed statement of the objects and purposes for which the said tax was levied.

25th. That on the 28th day of October, 1930, the said Board of Mayor and Councilmen of the City of Meridian did, in lawful meeting at the time and place and in the manner prescribed by law, said Charter, Charter Amendments and Ordinances, levy certain advalorem taxes for the Meridian Separate School District for the fiscal year 1930 upon all of the taxable property in the said Meridian Separate School District, said levy being in the total amount of ten mills on each dollars valuation, which said levy was made by an ordinance No. 752, entitled, "An Ordinance to Provide a Revenue and Levy a Tax for the Meridian Separate School District for the Fiscal Year 1930," passed by the Councilmen and approved by the Mayor on the 28th day of October, 1930, a true and correct copy of which ordinance is hereto attached marked Exhibit "E" and made a part hereof and is now specially referred to for a detailed statement of the objects and purposes for which said tax was levied.

26th. That by reason of all of the foregoing there became due the said City of Meridian the sum of Eight Thousand One Hundred Two and 85/100 Dollars as taxes for the year 1930 against said capital stock, surplus and undivided profits of said First National Bank of Meridian.

27th. That also by reason of all of the foregoing there became due the Meridian Separate School District the sum of Five Thousand Four Hundred One and 90/100 Dollars [fol. 11] as taxes for the year 1930 against the said capital stock, surplus and undivided profits of said First National Bank of Meridian.

28th. That said taxes due both to the City of Meridian and the Meridian Separate School District were due by the share holders of the said First National Bank of Meridian, but said First National Bank of Meridian was, by law and the said Charter, Charter Amendments and Ordinances, liable to pay said taxes as the Agent of each of its shareholders and was authorized to pay same out of their individual profit account or to charge same to their expense account or to any other account which said shareholders might have with the said bank, all in proportion to their ownership.

29th. That under the law, said Charter, Charter Amendments and Ordinances, the said taxes so due the City of

Meridian and the Meridian Separate School District became and were debts due by the said shareholders of the said First National Bank of Meridian to the said City of Meridian and the Meridian Separate School District.

30th. That it became and was the duty of the said First National Bank of Meridian to pay the amount of said taxes due the City of Meridian and the Meridian Separate School District to the City Tax Assessor and Collector on or before the first day of December 1930 and to charge the same to the individual profit accounts of its said shareholders or to their expense accounts or to any other accounts said shareholders might have had with said bank.

31st. That during the period from January 1st, 1930, to January 13th, 1931, and also during the period from April 1st, 1930, to January 13th, 1931, and also during the period from December 1st, 1930, to January 13th, 1931, the said [fol. 12] First National Bank of Meridian had in its possession and under its control divers large sums of money belonging to its said share holders, said money being both dividends declared upon the said shares as well as money on deposit in said bank to the separate accounts of said shareholders. The exact amount of such dividends and deposits is unknown to your complainant, but upon information which he believes to be true, he avers that same was as to each and every of said shareholders largely in excess of each shareholder's pro rata portion of the total taxes due the State of Mississippi, the County of Lauderdale, the City of Meridian and the Meridian Separate School District as hereinbefore set forth.

32nd. That notwithstanding its duty to pay the amount of said taxes due the City of Meridian and the City of Meridian and the Meridian Separate School District, to-wit: the sum of Thirteen Thousand Five Hundred Four and 75/100 Dollars to the City Tax Assessor and Collector of the City of Meridian on or before December 1st, 1930, out of the funds and monies of its shareholders then and theretofore in its possession, the said First National Bank of Meridian wholly failed, neglected and refused so to do and thereby became and was liable and indebted, directly and primarily, unto the said City of Meridian and the Meridian Separate School District for the full amount of said taxes.

33rd. That on the 13th day of January, 1931, the said First National Bank of Meridian became insolvent, suspended business and was thereafter duly liquidated by a Receiver appointed by the Comptroller of the Currency.

34th. That between the 13th day of January, 1931, and the 12th day of July, 1931, the defendant, First National Bank in Meridian, was organized for the purpose of ac-
[fol. 13] quiring the assets of the then insolvent First National Bank of Meridian and engaging in the banking business.

35th. That on or about the 4th day of June, 1931, the defendant, First National Bank in Meridian, purchased of and from C. P. Rogers, the then duly appointed and acting Receiver of the First National Bank of Meridian, certain of the assets of said First National Bank of Meridian, said purchase and sale being evidenced by a written contract or agreement entered into between said Receiver and said First National Bank in Meridian pursuant to a decree of the District Court of the United States for the Eastern Division of the Southern District of Mississippi. True copy of said contract is hereto attached, marked Exhibit "F" and made a part hereof.

36th. That by the terms of said contract, Exhibit F hereto, the defendant, First National Bank in Meridian, assumed and became liable for all of the debts and liabilities of the First National Bank of Meridian including among others its debt and liability for all of the taxes hereinbefore mentioned.

37th. That notwithstanding its said obligation the defendant, First National Bank in Meridian, has not paid said taxes or any part thereof to either the State of Mississippi, the County of Lauderdale, the City of Meridian or the Meridian Separate School District, nor to any person for them.

38th. That no person or corporation has paid any portion of said taxes but on the contrary they remain past due and wholly unpaid.

39th. That during the promotion or organization of the First National in Meridian a committee composed of Levi
[fol. 14] Rothenberg, F. J. Hughes and J. M. Wilson acting

for the use and benefit of said First National Bank in Meridian purchased of and from all of the shareholders of the First National Bank of Meridian their several shares of stock and the consideration for the purchase of said several shares of stock was, among other things, that the said First National Bank in Meridian should, after its organization and opening relieve the said shareholders of all statutory liability imposed upon them as shareholders in said First National Bank of Meridian.

40th. That said purchases and sales were in each and every case evidenced by written agreements, sample copies of which are hereto attached, marked Exhibit "H" and "I" and made a part hereof.

41st. That said First National Bank in Meridian was duly organized and began business on June 12th, 1931, and did in due course by appropriate corporate action ratify and confirm the actions of said Committee as set forth in paragraphs Nos. 38 and 39 above and did thereby assume and undertake to discharge all liabilities of every kind imposed by statute upon the said shareholders of the First National Bank of Meridian by reason of their ownership of said shares, among which liabilities was and is the liability to pay all of the taxes due the State of Mississsippi, County of Lauderdale, City of Meridian and Meridian Separate School District, as hereinbefore set forth.

42nd. Complainant has heretofore in this bill of complaint charged that the various assessment and tax levies by the City of Meridian were authorized by and made in strict conformity to the Charter, Charter Amendments and [fol. 15] Ordinances of said City of Meridian. Complainant here and now refers to and specially pleads as such authority the following, to-wit:

(a) An act of the Legislature of Mississippi approved March 5th, 1872 entitled "An Act to Consolidate the Several Acts of Incorporation of the City of Meridian and to Alter and Amend the Same."

(b) An act of the Legislature of Mississippi approved April 4th, 1874, entitled "An Act to amend an act entitled, 'An Act to consolidate the several acts of incorporation of the City of Meridian, and to alter and amend the same,' approved March 5th, 1872, and for other purposes."

(c) An Act of Legislature of Mississippi approved March 7th, 1882 entitled, "An Act to authorize and empower the City of Meridian to issue bonds for water supply sewerage, street improvement, and for other purposes."

(d) An act of the Legislature of Mississippi approved March 16th, 1886 entitled, "An act to amend the Charter of the City of Meridian."

(e) An act of the Legislature of Mississippi approved February 25th, 1888, entitled, "An act to amend the Charter of the City of Meridian in Lauderdale County."

(f) An act of the Legislature of Mississippi approved February 29th, 1888, entitled "An act authorizing the board of Mayor and Councilmen of the City of Meridian to erect a market house, and to issue bonds for that purpose and for other purposes."

(g) An act of the Legislature of Mississippi approved March 3rd, 1888, entitled, "An act in Reference to the free public schools of the City of Meridian."

[fol. 16] (h) An act of the Legislature of Mississippi approved March 6th, 1888 entitled "An act to provide for the issuance of bonds for public school buildings by the City of Meridian, Mississippi."

(i) An act of the Legislature of Mississippi approved February 22nd, 1890, entitled, "An act to amend the Charter of the City of Meridian."

(j) An act of the Legislature of Mississippi approved April 2nd, 1892, entitled, "An act to authorize and empower the City of Meridian to issue bonds for the construction of a sewerage system and for other purposes."

(k) An Act of the Legislature of Mississippi approved February 6, 1894, entitled, "An act to authorize the City of Meridian to issue bonds and to purchase or construct waterworks, and for other purposes."

(l) An Act of the Legislature of Mississippi approved February 11th, 1898, entitled, "An act to authorize the Mayor and Boards of Aldermen and Councilmen of the City of Meridian to issue bonds in the sum of Twenty Thousand Dollars to pave Twenty-second Avenue and

Twenty-fifth Avenue, and thereafter any other streets and avenues, with vitrified brick, and for other purposes."

(m) An Amendment to the Charter of the City of Meridian approved on April 15th, 1901, entitled, "Amendment of an Act to amend an act entitled, 'An act to consolidate the several acts of incorporation of the City of Meridian, and to amend and alter the same,' approved April 4th, 1874.

(n) An amendment to the Charter of the City of Meridian approved February 7th, 1902, entitled, "An amendment to the Charter of the City of Meridian, authorizing [fol. 17] said City to issue bonds to buy lots or lands and to construct a school building thereon, and for other purposes.

(o) A resolution of the mayor and boards of aldermen and councilmen of the City of Meridian electing not to come under the provisions of the chapter on Municipalities in the Annotated Code of 1892, passed and approved on April 20th, 1892.

(p) An amendment to the Charter of the City of Meridian approved June 27th, 1904, entitled, "An act to authorize the City of Meridian to establish and maintain a City Park, and for other purposes."

(q) An amendment to the Charter of the City of Meridian approved October 22nd, 1904, entitled, "An act to amend the city charter of the City of Meridian so as to authorize the mayor and boards of councilmen and aldermen of the said City of Meridian to issue bonds in the sum of thirty-five thousand dollars for sewerage extensions and for the construction of sewerage connections in the City of Meridian, and for other purposes.

(r) An amendment to the Charter of the City of Meridian approved October 22nd, 1904, entitled, "An Act to amend the Charter of the City of Meridian so as to authorize the mayor and boards of aldermen and councilmen of said city to issue bonds in the sum of twenty-five thousand dollars in order to liquidate the floating indebtedness now due from said city, and for other purposes."

(s) An amendment to the Charter of the City of Meridian approved October 22nd, 1904, entitled, "An Act to

amend the city charter of the City of Meridian so as to authorize the mayor and boards of councilmen and aldermen of the said city of Meridian to issue bonds in the sum [fol. 18] of one hundred thousand dollars to pave the streets, avenues and the sidewalks hereafter mentioned, and for other purposes."

(t) An amendment to the Charter of the City of Meridian approved February 22nd, 1906, entitled, "An Act to amend the Charter of the City of Meridian, authorizing said city to issue bonds to buy lots of lands, and to construct school building or buildings thereon, and for other purposes."

(u) An amendment to the Charter of the City of Meridian approved October 16th, 1907, entitled, "An Ordinance amending the Charter of the City of Meridian, Lauderdale County, State of Mississippi, so as to authorize the mayor and boards of councilmen and aldermen of said city to issue bonds to pave and improve certain streets of said city, and for other purposes."

(v) An amendment to the Charter of the City of Meridian approved July 24th, 1909, entitled, "An ordinance amending the charter of the city of Meridian so as to authorize said city to levy and enforce special assessments for special improvements, and to issue and sell bonds to pay for said improvements, and other purposes, procured in conformity to Section 3444 of the Code of Mississippi, 1906."

(w) An amendment to the Charter of the City of Meridian approved January 3rd, 1910, entitled, "An Ordinance amending Section 3 of the Charter Amendment of the City of Meridian, approved by the Governor on the 24th day of July, 1909, so as to authorize the mayor and boards of councilmen and aldermen to issue street paving certificates and levy a general assessment of taxes for the payment of same."

[fol. 19] (x) An amendment to the Charter of the City of Meridian approved May 7th, 1910, entitled, "An Ordinance amending the charter of the city of Meridian, Mississippi, so as to empower and authorize the municipal authorities to make certain public improvements and issue bonds to pay for same, and for other purposes."

(y) An amendment to the Charter of the City of Meridian approved May 18th, 1911, entitled, "An Ordinance amending the Charter of the City of Meridian, Mississippi, so as to empower and authorize the Municipal authorities to borrow money and properly evidence same."

(z) An amendment to the Charter of the City of Meridian approved April 15th, 1912, entitled, "An Ordinance amending the Charter of the City of Meridian, Mississippi, so as to authorize and empower the municipal authorities to require railroad companies to erect, build and construct viaducts, subways, bridges, approaches, and all like necessary safety devices for public travel over or under railroad crossings, and regulate same for the public welfare, and to authorize and empower the municipal authorities to contribute to the cost of approaches in their discretion, and to sell bonds and pay for same, procured in conformity to Section 3444 of the Code of Mississippi, 1906."

(aa) An amendment to the Charter of the City of Meridian approved October 10th, 1913, entitled, "An Ordinance to extend, define and limit the powers of the council of the City of Meridian, Mississippi, to borrow money on the faith and credit of the said city and to issue the bonds of the said city for the moneys so borrowed."

[fol. 20] (bb) An amendment to the Charter of the City of Meridian approved December 30th, 1913, entitled, "An Ordinance to extend, define and limit the powers of the Council of the City of Meridian with reference to acquiring a suitable site for the construction of a New City Hall, providing the funds to pay for same, and for other purposes."

(cc) An amendment to the Charter of the City of Meridian approved March 17th, 1917, entitled, "An Ordinance to extend, define and limit the Powers of the Council of the City of Meridian to purchase lands for a right of way and ordinary depot purposes within said city, for the benefit of Meridian & Bigbee River Railway Company, and to issue and sell the negotiable bonds of said City to raise money for the same."

Premises Considered, your complainant prays that the said First National Bank in Meridian be made a party defendant hereto and required by proper process to this

Court to plead, answer or demur hereto at the August, 1933, Rules of this Court (answer under oath being hereby specially waived) and that upon a final *f*earing hereof a personal decree be rendered against the said First National Bank in Meridian in favor of your complainant, James B. Gully as State Tax Collector, for all of the taxes aforesaid, to-wit: the sum of Four Thousand Three Hundred Twenty-one and 08/100 Dollars for the use and benefit of the State of Mississippi; Eight Thousand Six Hundred Forty-two and 16/100 Dollars for the use and benefit of the County of Lauderdale in said State of Mississippi; Eight Thousand One Hundred Two and 85/100 Dollars for the use and benefit of the City of Meridian in the said state and Five Thousand Four Hundred One and 90/100 Dollars for the use and benefit of the Meridian Separate School District in Lauderdale County in said state, all with interest thereon at the rate of six per centum per annum from the 1st day [fol. 21] of December, 1930, until paid and all costs of this proceeding.

Of if mistaken in the relief prayed for, then for such other, further and different relief as to the Court may seem meet and proper.

And as in duty bound your complainant will ever pray.

James B. Gully, State Tax Collector, by Marshall W. Amis, J. C. Floyd, Attorneys.

EXHIBIT "A" TO COMPLAINT

Supervisors Court, August, 1930, Term

STATE OF MISSISSIPPI,
Lauderdale County:

The Board of Supervisors of said county (after having given notice to the taxpayers of said county by publishing the following:

"To the taxpayers of Lauderdale County, State of Mississippi:

You will please take notice that the assessments of real and personal property on the rolls of 1930 have been changed and corrected by this Board so as to comply with

the laws of the State, and that said revised rolls are now open for examination, and that any objection to any assessments contained in said revised rolls must be made in writing and filed with the Clerk of this Board on or before the first Monday of August, 1930, at his office in the City of [fol. 22] Meridian, said County, and that any or all assessments to which no objection is then and there made, will be made final.

This the 23rd day of July, 1930.

The Board of Supervisors of Said County, by J. B. Holland, Clerk of said Board."

in the Meridian Star, a newspaper located and published at Meridian, Mississippi, which notice was published and circulated by said newspaper on the 24th day of July, 1930, in said county, by said Clerk.)

Met in the Lauderdale County Court House on the 4th day of August, 1930. being the first Monday of August, 1930, and continued in session from day to day hearing objections to assessments, taking testimony of witnesses and examining books, records and papers with reference to the assessments of property to make such changes in the assessments (as fixed by it on the rolls at its July 1930 Meeting) that it was satisfied should be made to fix assessments of property at its actual value so as to establish an equality and uniformity of taxation according to value among the taxpayers of said county. Now, being satisfied that said assessment rolls contain assessments, fair, equal, uniform and just according to the value of the real and personal property therein described, it is therefore hereby ordered that the said rolls and the assessm-nts therein now contained be and they are hereby accepted, approved and made final and that the Final Recapitulations of said assessments rolls be certified to the State Tax Commission on the blanks furnished by it, and as required by law.

[fol. 23] EXHIBIT "A-1" TO COMPLAINT

Pursuant to the directions and requirements of the State Tax Commission of Mississippi, the Board of Supervisors

has completed the revision of the real and personal rolls for the year 1930, as shown by extensions and additions made upon the said Real and Personal Rolls by using Violet Ink. All the increases or reductions as to valuation of property being shown by figures written in Violet Ink opposite the property assessed upon said assessment roll.

It is therefore hereby ordered that the said Real and Personal Assessment Rolls of Lauderdale County for the year 1930, as revised and amended, be and the same are hereby approved, and the Clerk is directed to make two copies of said Rolls, furnishing one to the State Tax Commission, and one to the Sheriff and Tax Collector of Lauderdale County.

EXHIBIT "B" TO COMPLAINT

STATE OF MISSISSIPPI,
County of Hinds:

Whereas, the Clerk of the Board of Supervisors of Lauderdale County has filed with the State Tax Commission a copy of the Personal Assessment Roll of said County as of the first day of January, 1930, in the manner prescribed by law and showing a total assessment of Personal property of $3,662,705.00; and it appearing to the satisfaction of the State Tax Commission that the assessments contained in same have been made and the roll prepared in conformity to the requirements of law, and that the assessments have been fixed in accordance with the orders of this Commission, it is, therefore, ordered that the said Personal Assessment Roll be and the same hereby is approved.

[fol. 24] Ordered and Adjudged this the 5th day of November, A. D. 1930.

The State Tax Commission, by L. C. Franklin, Chairman; by H. H. Castell, Commr.; by Webb Walley, Commr.

Attest: A. S. Coody, Secretary.

EXHIBIT "C" TO COMPLAINT

In the matter of the levy for the fiscal year 1930, for the collection of taxes in Lauderdale County, Mississippi; it

is ordered that the levy for the fiscal year 1930 beginning October 1st, 1930, is hereby fixed as follows:

General County Find	6.00
Road Fund	2.00
School Fund	10.00
School Building and Improvement Interest & Sinking Fund	.50
East Mississippi Junior College	.10
Bridge and Culvert, Interest and Sinking Fund	.40
Funding Bond, Interest and Sinking Fund	.50
Loan Warrant Fund	.40
T. B. Hospital	.50
Road Bond, Interest and Sinking Fund	1.10
Road Improvements Bonds, Interest and Sinking Fund	.25
Good Roads District #1, Interest and Sinking Fund	1.75
Good Roads District #1, Maintenance Fund	3.00
Good Roads District #2, Interest and Sinking Fund	3.50
[fol. 25] Good Roads District #2, Maintenance Fund	2.00
Good Roads District #3, Interest and Sinking Fund	7.00
Goods Roads District #4, Interest and Sinking Fund	7.00
Good Roads District #5, Interest and Sinking Fund	.50
Goods Roads District #5, Maintenance Fund	3.00
Kewanee-Toomsuba Roads District, Interest & Sinking Fund	2.00
Bonita School, Interest and Sinking Fund	4.00
Bonita School Fund	3.75
Cuaseyville School Fund	2.60
Center Hill School Interest and Sinking Fund	2.00
Center Hill School Fund	4.00
Center Hill Building and Improvement Fund	2.00
Collinsville School, Interest and Sinking Fund	2.00
Collinsville School Fund	10.00
Daleville School Fund	10.00
Dixie Highway, Interest and Sinking Fund	1.50
Dixie Highway School Fund	4.00
Dry Creek School, Interest and Sinking Fund	2.00
Dry Creek School Fund	7.00
Enterprise School, Interest and Sinking Fund	3.00
Enterprise School Fund	4.00
Kennedy School Fund	3.00
Kewanee-Alamucha, Interest and Sinking Fund	1.00

Lauderdale School, Interest and Sinking Fund	3.00
Lauderdale School Fund	10.00
Long Creek, Interest and Sinking Fund	3.00
Long Creek School Fund	3.00
Marion School, Interest and Sinking Fund	1.50
Marion School Fund	3.00
Martin School, Interest and Sinking Fund	7.00
Martin School Fund	9.00
Meehan School, Interest and Sinking Fund	1.00
Meehan School Fund	4.00
Obediah School, Interest and Sinking Fund	3.00
[fol. 26] Obediah School Fund	3.00
Ponta School Fund	3.75
Ponta School, Interest and Sinking Fund	2.00
Russell School Fund	4.50
Suqualena School, Interest and Sinking Fund	6.00
Suqualena School Fund	10.50
Vimville School, Interest and Sinking Fund	4.50
Vimville School Fund	4.50
Whynot School, Interest and Sinking Fund	2.00
Whynot School Fund	6.20

Each Person outside the limits of the City of Meridian subject to Road Tax, a $3.00 Road Commutation Tax.

Each person in said county, subject to Poll Tax, a $2.00 Poll Tax.

All taxable property inside the corporate limits of the City of Meridian, and such property as annexed to the City of Meridian Separate School District, are not subject to School Tax of 10 mills.

EXHIBIT "C-1" TO COMPLAINT

No. 597

A Resolution Approving, Adopting and Confirming the Real and Personal Assessment Roll of the City of Meridian for the Fiscal Year 1930, as Heretofore Corrected and Equalized by the Council of Said City.

Whereas, on the — day of —— as the assessment of real and personal property of the City of Meridian was duly

completed, sworn to and filed with the City Clerk & Treasurer of the City of Meridian by C. F. Royals, Assessor & [fol. 27] Tax Collector of the City of Meridian; and,

Whereas, on the 28th day of October, 1930, the Council of the said City of Meridian gave due notice to the tax payers of the City of Meridian in words and figures as follows, to-wit:

"Notice to Tax Payers of the City of Meridian, Mississippi."

Pursuant to the provisions of the Charter and Ordinances of the City of Meridian, notice is hereby given that the assessment or persons and property in the City of Meridian and the Meridian Separate School District for the fiscal year 1930 with the valuation of the property together with the tax laid thereon is now on file in the office of the City Clerk and Treasurer of the City of Meridian and is now ready for inspection and subject to inspection by all and every person interested therein.

Every person who shall or may be dissatisfied with the said assessment of the valuation or the tax laid thereon shall give notice to the Council, in writing, to alter said assessment or valuation or the tax laid on the same, and shall give evidence before the Council, by witness or otherwise, of the correct valuation of such property.

Notice is hereby also given that the Council will meet in the Council Chamber of the City Hall of Meridian, at the hour of ten o'clock in the forenoon, on the 28th day of November, 1930, for the purpose of considering all written complaints touching said assessment and all evidence that may be offered in regard to the same and making all cor- [fol. 28] rections in said assessment which may be warranted by the evidence then and there produced before the Council.

In Testimony Whereof, Witness my signature, this the 28th day of October, 1930.

The Council of the City of Meridian, Mississippi, by W. H. Owen, Mayor."

Which said notice was duly published in the Meridian Star, a public newspaper in the City of Meridian, for a period of ten days, proof of publication of which said notice

is now on file in the office of the City Clerk and Treasurer; and,

Whereas, pursuant to the notice aforesaid, divers tax payers in the City of Meridian and the Meridian Separate School District have given notice to the Council to alter said assessment and valuation and the Council having, on the 28th day of November, 1930, beginning at the hour of ten o'clock A. M. and continuing by adjournment from day to day until Saturday, November 29th, 1930, at ten o'clock A. M., heard and considered the divers complaints of said taxpayers touching the said assessment rolls, both real and personal, and having been fully advised in the premises, have corrected, altered and equalized the assessment of real and personal property on the said assessment rolls as shown by entries in red ink made thereon as well as said rolls to certain corporations there named;

Be It Therefore Resolved by the Council of the City of Meridian, so Ordered, Adjudged and Decreed: That said assessment rolls so corrected and equalized as above indicated, showing a total valuation of all real estate in the sum of — Dollars and a total valuation of all personal property [fol. 29] in the sum of — Dollars and a total valuation of all banks in the sum of — Dollars and a total valuation of all corporations in the sum of — Dollars and a total of all property owned by public service corporations in the sum of — Dollars, and a total amount to be collected on account of sidewalks, curbing, street crossings and street paving benefits in the sum of — Dollars and a total amount to be collected on account of sewerage connections in the sum of — Dollars and a total amount to be collected on account of poll or street taxes in the sum of — Dollars be and the same are hereby approved, ratified and confirmed as the lawful assessment of persons and property in the City of Meridian and the Meridian Separate School District for the fiscal year 1930; and the Mayor of the City of Meridian is hereby authorized, directed and required to cause a copy of said assessment rolls, so corrected and equalized by the Council, to be made up by the City Clerk and Treasurer and to issue his warrant to the Tax Collector attached thereto, which said copy of said assessment rolls and said warrant shall be delivered to the Tax Collecter of said City for the collection of the municipal taxes for the City of Meridian for the fiscal year 1930.

Be It Further Resolved by the Council of the City of Meridian, so Ordered, Adjudged and Decreed: That all complaints and objections to said assessments of persons and property in the said City of Meridian as shown by said assessment rolls, which have not been corrected or altered on said assessment rolls by the Council, are hereby overruled and dismissed for want of sufficient legal proof to warrant the alteration or changing of such assessment.

Passed by the Council and approved by the Mayor, this the 29th day of November, 1930.

W. H. Owen, Mayor.

[fol. 30] EXHIBIT "D" TO COMPLAINT

An Ordinance to Provide a Revenue for the City of Meridian for the Fiscal Year 1930

Be It Ordained by the Mayor and Councilmen of the City of Meridian:

Section 1. That the following taxes for the support and maintenance of the Government of the City of Meridian for the fiscal year 1930, be and are hereby levied on all the real estate and personal property in said City not exempt from taxation by the laws of the State of Mississippi and the ordinances of the City of Meridian, money on hand, loaned or deposited, and all other property of every kind and description within the corporate limits of the City of Meridian which is liable for taxation under the constitution and laws of the State of Mississippi and the Charter and laws of the City of Meridian, to-wit:

2 and 17/20 mills on each dollar's valuation thereof for annual interest on the following outstanding bonds and obligations of the City of Meridian, namely:

$32,000.00 4½% Sewer Bds. dated February 1, 1905.
25,000.00 4½% Funding Bds. dated Feb. 1, 1905.
50,000.00 5% Res. St. Paving Bds. dated Dec. 1, 1909.
50,000.00 5% Drainage Bds. dated Oct. 1, 1910.
15,000.00 5% Park Imp. Bds. dated Jan. 1, 1911.
15,000.00 5% Fire Dept. Bds. dated Jan. 1, 1911.
10,000.00 5% San. Sewer Bds. dated Jan. 1, 1911.
75,000.00 4½% City Hall Bds. dated July 1st, 1911.

8,000.00 5% St. Imp. Bds. dated April 1, 1913.
4,000.00 5% San Sewer Bds. dated April 1, 1913.
48,000.00 5% Funding Bds. dated April 1, 1913.
8,000.00 5% St. Equip. & Bridge Bds. dated April 1, 1913.

[fol. 31]

18,000.00 5% Ry. Term. & R/W Bds. dated Oct. 1, 1913.
10,000.00 5% San. Sewer Br. & Drg. Bds. dated Aug. 1, 1915.
20,000.00 5% City Hall & Jail Bds. dated Aug. 1, 1915.
7,000.00 5% Ref. S/W Paving Bds. dated March 1, 1917.
5,000.00 6% Incinerator Bds. dated May 1, 1920.
5,000.00 6% 1917 Incinerator Bds. dated May 1, 1920.
60,000.00 6% St. Imp. Bds. dated May 1, 1920.
51,000.00 6% Charity Hospital Bds. dated June 1, 1922.
20,000.00 5% Bridge & Sewer Bds. dated June 1, 1923.
1,388.40 6% St. Inter. Bds. dated Aug. 1, 1923.
893.31 6% St. Inter. Bds. dated Aug. 1, 1923.
36,721.48 6% St. Inter. Bds. dated Aug. 1, 1923.
77,582.67 5½% Ref. Sewer Bds. dated May 1, 1924.
69,000.00 5½% St. Inter. Bds. dated May 1, 1924.
54,000.00 4¾% St. Inter. Bds. dated July 1st, 1925.
20,000.00 4¾% San. Sewer & Drg. Bds. dated Aug. 1, 1925.
15,000.00 4¾% St. Exten. Bds. dated Aug. 1, 1925.
16,295.00 6% Ref. St. Paving Bds. dated April 1, 1926.
113,000.00 5% San. Sewer Bds. dated Sept. 1, 1926.
30,000.00 5¼% St. Inter. Bds. dated June 1, 1926.
10,080.00 6% St. Inter. Bds. dated July 1, 1927.
68,000.00 5% R/W Term. & R. W. Bds. dated Sept. 1, 1927.
192,000.00 4½% San. Sewer Ext. & Drg. Bds. dated May 1, 1928.
23,000.00 5% Fire Dept. Ext. & Equip. Bds. dated May 1, 1928.
13,800.00 5% White Way & St. Dept. Bds. dated May 1, 1928.
11,500.00 5% Ref. St. Paving Bds. dated July 1, 1928.

[fol. 32]

86,000.00 5% St. Inter. Bds. dated July 1, 1928.
8,252.89 6% St. Inter. Bds. 8th St. dated Feb. 1, 1929.
91,000.00 6% St. Inter. Bds. dated July 1, 1929.
75,000.00 5¼% Airport Bds. dated Nov. 1, 1929.

Also 4 & 3/20 mills on each dollar's valuation thereof for the payment of the following serial bonds falling due during the fiscal year 1930 namely:

1—5% St. Imp. Bds. dated April 1, 1913.
6—5% Funding Bds. dated April 1st, 1913.
1—5% St. Equip. & Bridge Bds. dated April 1, 1913.
2—5% Ry. Term. & R/W Bds. dated Oct. 1, 1913.
1—5% San. Sewer Bridge & Drg. Bds. dated Aug. 1, 1915.
2—5% City Hall & Jail Bds. dated Aug. 1, 1915.
1—6% Incinerator Bds. dated May 1, 1920.
3—6% Concrete Bridge Bds. dated May 1, 1920.
4—6% St. Imp. Bds. dated May 1, 1920.
3—6% Charity Hospital Bds. dated June 1, 1922.
12—6% St. Inter. Bds. dated June 1, 1923.
4—5½% Ref. Sewer Bds. dated May 1, 1924.
17—5½% St. Inter. Bds. dated May 1, 1924.
10—4¾% St. Inter. Bds. dated July 1, 1925.
1—4¾ San. Sewer & Drg. Bds. dated Aug. 1, 1925.
1—4¾% St. Exten. Bd. dated Aug. 1, 1925.
1—6% Ref. St. Paving Bd. dated April 1, 1926.
3—5% San. Sewer Bds. dated Sept. 1, 1926.
5—5¼% St. Inter. Bds. dated June 1, 1926.
4—4¼% San Sewer Ext. & Drg. Bds. dated May 1, 1928.
1—5% Fire Dept. Exten. & Equip. Bd. dated May 1, 1928.
10—5% St. Inter. Bds. dated July 1, 1928.
1—6% St. Inter. Bds. 8th St. dated Feb. 1, 1929.
10—6% St. Inter. Bds. dated July 1, 1929.
3—5¼% Airport Bds. dated Nov. 1, 1929.

[fol. 33] Each of said bonds for the sum of $1,000.00.

2—5% Ref. S/W Paving Bds. dated Mar. 1, 1917, for $500.00 each.
4—5% R/W Term. & R/W Bds. dated Sept. 1, 1927, for $500.00 each.
2—5% Bridge & Sew. Bds. dated June 1, 1923, for $500.00 each.
1—5% Ref. St. Pav. Bds. dated July 1, 1928 for $500.00.
1—6% St. Inter. Bd. dated Aug. 1, 1923, for $462.80.
1—6% St. Inter. Bd. dated Aug. 1, 1923, for $297.77.
1—6% St. Inter. Bd. dated July 1, 1927, for $1,440.00.
1—5% White Way & St. Dept. Bd. dated May 1, 1928, for $600.00.

Also 8 mills on each dollar's valuation thereof for general purposes, consisting of the maintenance of public order; and maintenance of street, public sanitation, Fire Department, street lighting and park; the support and maintenance of the Carnegie Library and the Lauderdale County Tuberculosis Hospital; and for the purpose of meeting and paying any and all other obligations or expenses of the government of the said City of Meridian during the fiscal year 1930, not hereinbefore specifically mentioned—the total of said tax and levy for specific and general purposes amounting to 15 mills on each dollar's valuation of said property.

Section 2. That a poll or street tax of Five Dollars ($5.00) be levied on each male inhabitant of said City over the age of eighteen years and under the age of sixty years, who is not deaf, dumb or blind, or maimed by the loss of foot or hand, or otherwise exempt by the ordinances of said City. Said poll or street tax, as levied, shall be col-[fol. 34] lected by the Tax Collector at the same time and in the same manner as the other taxes of the City are collected, as provided by law.

Section 3. That this ordinance take effect and be in force from and after its passage, approval and publication as required by law, and that all ordinances or parts of ordinances of the City of Meridian in conflict herewith, be and the same are hereby repealed.

Passed by the Council and approved by the Mayor, this the 28th day of October, 1930.

W. H. Owen, Mayor.

EXHIBIT "E" TO COMPLAINT

No. 752

An Ordinance to Provide a Revenue and Levy a Tax for the Meridian Separate School District for the Fiscal Year 1930

Be It Ordained by the Mayor and Councilmen of the City of Meridian:

Section 1. That the following taxes for the support and maintenance of the Public Schools for the Meridian Sepa-

rate School District for the fiscal year 1930, be and are hereby levied on all of the real estate and personal property within the said Meridian Separate School District not exempt from taxation by the laws of the State of Mississippi, to-wit:

1 and 3/20 mills on each dollar's valuation thereof for the annual interest on the following school bonds and obligations of the City of Meridian, namely:

$35,000.00 4½% School Bonds dated January 1, 1907.
[fol. 35]
9,000.00 4½% Ref. School Bonds dated April 1, 1909.
100,000.00 5% School Imp. Bonds dated July 1st, 1911.
27,000.00 5% School Ext. & Equip. Bds. dated July 1, 1914.
24,411.45 5% Ref. Sch. House Bds. dated Oct. 1, 1922.
430,000.00 5¼% Mdn. Sep. School Dist. Bds. dated May 1, 1924.

Also 17/20 mills on each dollar's valuation thereof for the payment of the following serial school bonds falling due during the fiscal year 1930, namely:

1—4½% Ref. School Bd. dated April 1, 1909.
3—5% Sch. Ext. & Equip. Bds. dated July 1, 1914.
20—5¼% Mdn. Sep. Sch. Dist. Bds. dated May 1, 1924.
2—5% Ref. Sch. House Bds. dated Oct. 1, 1922, for $600.00.

Each of said bonds being for the sum of $1,000.00.

Also 8 mills on each dollar's valuation thereof of said property to pay for fuel and other necessities for the Public Schools of said Meridian Separate School District, and also for maintaining the schools of said Separate School District after the four months' term provided for by the State of Mississippi; also to supplement during said four months; also to repair and equip the school buildings of said Separate School District; and also for the purpose of paying back money borrowed to operate the Public Schools of the said Meridian Separate School District during the months of October, November and December, 1930, and January, 1931, as authorized by an order passed by the [fol. 36] Board of Trustees of the Meridian Separate School District.

Section 2. That the aforesaid tax levy for school purposes, amounting in the aggregate to 10 mills on each dollar's valuation all the taxable property within said Meridian Separate School District, shall be levied, assessed and collected at the same time and in the same manner and under the same penalties for non-payment thereof as the taxes of the City of Meridian for general purposes are levied, assessed and collected.

Section 3. That this ordinance take effect and be in force from and after its passage, approval and publication as required by law, and that all ordinances or parts of ordinances of the City of Meridian in conflict with this ordinance, be and the same are hereby repealed.

Passed by the Council and approved by the Mayor, this the 28th day of October, 1930.

W. H. Owen, Mayor.

EXHIBIT "F" TO COMPLAINT

Contract for Sale of Assets of the First National Bank of Meridian, Mississippi

This agreement made this 4th day of June, 1931, by and between C. P. Rogers, Receiver of the First National Bank of Meridian, Mississippi, hereinafter referred to as the receiver, party of the first part, and the First National Bank in Meridian, Mississippi, hereinafter referred to as the purchaser, party of the second part.

Whereas, the First National Bank of Meridian, Mississippi, hereinafter referred to as the suspended bank, sus- [fol. 37] pended on the 13th day of January 1931, by resolution of its Board of Directors, and said C. P. Rogers was duly appointed as subsequently duly qualified as receiver of said suspended bank, and is now acting as such receiver, and;

Whereas, approximately 90.59% in amount of the unsecured depositors and creditors of said suspended bank have heretofore, for the purpose of facilitating the organization of a new bank, to acquire the assets of said suspended bank so as to enable said assets to be liquidated by said new bank as a going concern rather than to subject said assets to liquidation through a receivership, executed cer-

tain contracts to the committee therein specified, whereunder said creditors so executing said contracts assigned their claims to said committee for the purpose of enabling said claims to be transferred to and utilized by said new bank in purchasing and acquiring the assets of said suspended bank, a draft of the form of one of the said creditors agreement or contracts being hereto annexed and made a part hereof and designated "Exhibit 1" and

Whereas, said new bank has been duly organized, and has been authorized by the Comptroller of the Currency to begin business under the name of the "First National Bank in Meridian, Mississippi", and said First National Bank in Meridian has acquired from said committee named in the aforesaid creditors agreement the aforesaid assigned claims aggregating approximately 90.59% in amount of the known unsecured creditors of said suspended bank, and

Whereas, said First National Bank in Meridian is now ready and willing, as purchaser hereunder, to acquire all of the assets of said suspended bank, and in consideration thereof will surrender to the receiver canceled and dis- [fol. 38] charged receiver's certificates representing the claims of the creditors executing the aforesaid creditors agreements aggregating approximately the said sum of $3,264,765.68, and in addition thereto said purchaser will assume and pay in full with interest the claims of all other creditors against said suspended bank, whether said claims be known or unknown, which may be duly established according to law, and in addition will assume and pay in full all expenses of the receivership of said suspended bank, both accrued and to accrue, including the customary charge of the Comptroller of the Currency for supervision of the receivership, it is, by the parties hereto, in consideration of the mutual promises and covenants to each other hereunto flowing, as hereinafter set forth, agreed as follows:

1. The purchaser does hereunder buy and the receiver does hereunder set all of the assets of said suspended bank, of every kind and description, and wheresoever located, and whether listed or not listed upon the books of said suspended bank, (exclusive of assessment liability of shareholders and liability if any, of director of said suspended bank) a schedule of the known assets of said suspended bank as now shown by its books, according to the best information of the parties hereto, to be set forth in a sched-

ule, to be signed by the parties hereto, designated and marked "Exhibit No. 2", said schedule to constitute part of this contract, but not to be attached hereto, and to be made in three counter-parts, one counter-part to be retained by each of the parties hereto, and one to be forwarded to the Comptroller of the Currency of the United States. It is understood that nothing in this contract contained shall give to the purchasing bank the right to take over and maintain the trust department business of the suspended bank, and that such trust department business as may subsequently be carried on by the purchasing bank [fol. 39] will be a matter separate and apart herefrom and governed by the requirements of the law concerning the establishment and maintenance of trust departments by national banks.

2. The purchaser, by way of payment for the assets hereunder bought, will:

(a) Deliver and surrender to the receiver canceled receiver's certificates aggregating approximately $3,264,765.68 (subject to adjustment in amount as of the date of delivery of the assets hereunder) and constituting approximately 90.59% in amount of the claims of the known unsecured depositors and creditors of said suspended bank.

(b) In addition to the cancellation and surrender and delivery of said receiver's certificates, the purchaser will pay to the receiver (subject to adjustment in amount as of the date of delivery of assets hereunder and subject to the refund of the unused surplus as hereinafter mentioned) the sum of $397,888.78 representing the amount necessary to pay all receivership expenses accrued and to accrue, and to enable the receiver to pay in full, with interest to the date of payment the claims of all known creditors who have not executed the aforesaid creditors agreement (it being the intention and purpose of the parties hereunder that the aforesame sum of $397,888.78 hereunder paid, together with the cancellation, surrender and return of the aforesaid receiver's certificates representing the claims of creditors executing the above mentioned creditors agreements, shall together completely discharge, or enable the receiver to discharge, the claims of all known creditors of said suspended bank and meet in full all receivership expenses accrued and to accrue during the period said receivership is,

in the discretion of the Comptroller of the Currency, contained in active operation), and said purchaser will pay [fol. 40] the receiver such further sums from time to time, during the period of active receivership, as the receiver may deem necessary to meet receivership expenses and to provide for the payment of such unlisted or unknown claims as may be duly established during the period of active receivership, provided, however, that the delivery by the receiver to the purchaser of the assets hereunder agreed to be sold and the payment by the receiver during the period of active receivership of the aforementioned claims of creditors not executing said creditors agreements, shall be considered to be and shall constitute *and* first and final dividend to the creditors of said suspended bank, and if the aforesaid sum of $397,888.78 hereunder paid by the purchaser to the receiver (or retained by the receiver from the assets as hereinafter provided) together with such further sums so paid as the receiver may from time to time deem necessary, as hereinabove provided, shall be found by the Comptroller of the Currency to be more than sufficient to pay, as aforesaid, said receivership agreements, said surplus shall be paid by the receiver to the trustee provided for in said creditors agreements and shall become part of the trusteed assets and subject to all of the purposes and objects of said trust.

(c) The aforesaid sum of $397,888.78 required by subparagraph (b) hereof to be paid by party of the second part to the receiver, may, at the option of the receiver, be retained by the receiver from the cash assets on hand for the purposes provided in said subparagraph (b).

3. It is understood and agreed by the parties hereto that although the transfer of assets hereunder by the receiver to the purchaser shall constitute an absolute and irrevocable sale of said assets, nevertheless the purhaser will, in its contract with the trustees provided for in said creditors agreements hereinabove referred to, whereby a [fol. 41] certain portion of the assets acquired by the purchaser hereunder are transferred to said trustees for liquidation in the manner provided in said creditors agreements, provided that such transfer of said portion of said assets to said trustees shall be subject to the requirement that in the liquidation of said trusteed assets, an accurate

record shall be kept of the liquidation and collection of the same, and that after the lien and/or claim and/or right of substitution or exchange of the party of the second part hereunder upon said trusteed assets and proceeds of liquidation thereof under said creditors agreements, has been satisfied and discharged, and after the depositors and creditors executing said creditors agreements and entitled to participate in said trusteed assets have received payment in full of the portions of their respective claims represented by said trusteed assets, together with interest upon the full amount of the claims of said depositors and creditors as the same existed at the suspension of said First National Bank of Meridian, (without, however, any obligation upon said purchasing bank to pay the portion of claims of said depositors and creditors represented in said trusteed assets, or any interest thereon), the surplus, if any, then remaining, and/or the portion, if any, of such trusteed assets then unliquidated, shall be held for the account of the shareholders of said suspended bank and for payment and/or delivery to such representative or trustee of said shareholders as may be designated by said shareholders to receive said surplus so remaining.

It is understood and agreed between the parties hereto that under and by virtue of the provisions of said creditors agreements, the purchasing bank will transfer to the trustees provided for in said creditors agreements, all of the assets acquired by the purchasing bank from the receiver under numbered paragraph (1) hereof, for administration [fol. 42] by said trustees in conformity to the provisions of said creditors agreements, save and except the following assets which are to be retained absolutely by the purchasing bank as it own property:

(a) All furniture and fixtures at an agreed valuation of $37,399.94;

(b) All real estate at an agreed valuation of $41,362.60;

(c) All claims and warrants (other than notes and bills receivable) at an agreed valuation of $24,891.63;

(d) All stocks at an agreed valuation of $1352.00;

(e) All Bonds at the prevailing market value as of date of delivery by the receiver to said purchasing bank.

(f) A sufficient amount of notes and bills receivable, at face value as of date of suspension (exclusive of all uncollected interest upon said notes and bills receiveable) to be selected by the purchasing bank, as shall, together with the assets enumerated in the foregoing sub-paragraphs a, b, c, d, and e, equal the amount of the liabilities of the creditors absolutely assumed and agreed to be paid by the purchasing bank under said creditors agreements.

It is further understood and agreed that all assets of the suspended bank and/or of the receiver sold and transferred to the purchasing bank under this contract shall be transferred without recourse and without warranty on behalf of or against said suspended bank and/or said receiver and that all necessary instruments and acts of transfer will be executed and performed by the receiver to give effect to this agreement and without in any way affecting the right of substitution of the purchasing bank under said creditors agreements.

[fol. 43] 4. The receiver will, at the time of the delivery of the assets hereunder required, also transfer and assign to the purchaser all contracts covering rental of safe deposit boxes and the purchaser will assume and undertake the further performance and obligations of said safe deposit box contracts, and the delivery of the contents of said boxes to the persons properly entitled to receive the same. The purchaser will also accept from the receiver delivery of all safe keeping items and will assume the further performance of the contracts, oral or written, covering safe keeping items and the responsibility for the further safe keeping and ultimate delivery of the same to the persons properly thereto entitled.

5. The purchaser, will, during the period of active receivership, furnish to the receiver suitable quarters in its banking premises, including light, heat, and janitor service, and also reasonable vault space, and the use of such of the furniture and fixtures of the suspended bank, as may be considered, by the receiver, necessary for receivership purposes during the period of active receivership.

In Witness Whereof the parties hereto have set their hands and affixed their seals this 4th day of June, 1931.

C. P. Rogers, Receiver, First National Bank of Meridian, Mississippi.

Attest:

Stella A. Elson, First National Bank in Meridian, Miss., by Levi Rothenberg, Pres.

Attest: C. M. Lawrence, Cashier. (Seal.)

[fol. 44] Creditors Agreement

For A Valuable Consideration, the undersigned creditor of First National Bank of Meridian, Mississippi, hereby transfers and assigns any and all claims of every nature of the undersigned against said bank and/or any receiver's certificate issued therefor, to Levi Rothenberg, J. M. Wilson and F. J. Hughes as a committee for the First National Bank in Meridian, a new bank to be organized, and to their successors in office as such committee, upon the following terms and conditions:

I. Such committee shall in its own name establish said claims, and obtain a receiver's certificate therefor, unless such certificate has been previously issued.

II. A new bank to be known as The First National Bank in Meridian is to be organized with $400,000.00 cash capital and $100,000.00 cash surplus, to which new bank, when organized and ready for business, this claim and/or such receiver's certificate as may have been issued therefor, will be transferred by such committee.

III. Such new bank, when organized, will assume and pay 75% of such claims as follows:

1. Ten per cent thereof, without interest, on date of opening of new bank.

2. Fifteen per cent thereof, without interest, in twelve months from date of opening of new bank.

3. Twenty-five per cent thereof, without interest, twenty-four months from date of opening of new bank.

[fol. 45] 4. Twenty-five per cent thereof, without interest, thirty-six months from date of opening of new bank.

As to such amount of said claim as is agreed to be paid twelve, twenty-four and thirty-six months from date of opening of new bank, said new bank will issue to the undersigned is transferable certificate of deposit without interest.

5. As to the remaining twenty-five per cent of said claims, the new bank will not assume nor agree to pay same, but will obligate itself to set apart in a trust fund, and transfer to trustees to be named by the board of directors of the new bank, certain loans and discounts aggregating a par or face value of approximately $1,254,-766.09 of First National Bank of Meridian acquired of the receiver of such bank by the new bank, to be liquidated by the trustees so named, on the following terms:

a. Such assets so set apart, transferred and assigned to such trustees shall, by such trustees, be liquidated without charge for their services, and without any expense except such as are necessarily incurred in the sale, conversion of such assets into cash, and/or such actual costs of Court and attorney's fees as may be necessarily incurred in the collection of such assets.

b. The trust shall continue in force and effect until the purpose thereof as herein set forth shall have been accomplished, with the right in the new bank, for a period of two years from the date of the opening thereof, to substitute any assets in its hands, acquired from the Receiver of the First National Bank of Meridian, for a corresponding amount of cash in the hands of such trustees derived from the liquidation of such trusteed assets, adjustment of interest to be made as of the date of such substitution; and with the further right in the new bank, dur-[fol. 46] ing such period of two years, to substitute in lieu of cash by it delivered to the trustees, a corresponding amount of the trusteed assets, if the new bank shall so elect; and with the further right in the new bank, if it so elects, to exchange with the trustees any assets of the new bank, acquired from the First National Bank of Meridian, for a corresponding amount of the trusteed assets, adjustment of interest to be made as of the date of such exchange. The new bank shall have the further right to be reimbursed by the trustees, as soon as funds in the hands of such trustees are sufficient and available therefor,

from the liquidation of such trusteed assets, for the expenses of the receivership of the First National Bank of Meridian, including those accrued, as well as those accruing during the period of such receivership.

c. At the expiration of such period of two years, such right of substitution, and/or exchange of assets of the new bank, shall terminate, and thereupon the trustees shall distribute, from time to time, the proceeds of the liquidation of such trusteed assets to the creditors entitled thereto to the payment of the unpaid 25% of their claims against the First National Bank of Meridian, secured by this trust agreement, together with interest upon the full amount of the claims of said creditors as the same existed at suspension for the period any part of said claims remain unpaid, such distribution to be in equal and ratable proportion of the amounts of their respective claims. Any amount remaining in the hands of the trustees after payment of such 25% of said claims, together with interest upon the full amount of the claims of said creditors as the same existed at suspension for the period any part of said claims remain unpaid, shall be distributed ratably to stockholders of First National Bank of Meridian.

[fol. 47] Whenever the trustees have as much as $25,000.00 in hand in cash, from the liquidation of such trusteed assets available for distribution to creditors under the terms of this agreement, such trustees shall make distribution thereof as hereinabove agreed.

d. The trustees shall convert the trusteed assets into cash as expeditiously as is consistent with good business principles, and in doing so shall have the right, in their name as trustees, to cause foreclosure of mortgages, to purchase mortgaged property at such foreclosure sales for the benefit of the trust estate whenever in the judgment of the trustees it is advisable so to do; to sell and convey any real or personal property, or collaterals pledged as security for the payment of the loans and discounts constituting the trust estate; to sell and convey any and all assets of the trust estate, and to settle and compromise with the debtors of the trust estate, on such terms as the trustees may deem advisable, by and with the approval of the board of directors of the new bank; to pay taxes on such trusteed assets, and keep the same insured and in repair

at the expense of the trust estate; and to institute and prosecute to judgment, in their names as such trustees, in Courts of competent jurisdiction, suits against parties indebted to the trust estate, and to collect such judgments; and to do any and all such acts, and to take any and all such proceedings, and to make any and all such adjustments, and to execute all such receipts and conveyances, as are necessary for the preservation and conversion into cash of all of the trusteed assets.

The trustees shall have full power to carry, at the expense of the trust estate, such liability insurance as in the judgment of the board of directors of the new bank may be advisable.

[fol. 48] e. At any time after the expiration of two years from the date of the opening of the new bank, upon the written request of twenty per cent in amount of the claims secured by this trust agreement, addressed to the new bank, the board of directors of the new bank will call upon and require the trustees to sell all of the trusteed assets at public outcry, to the highest bidder for cash, in front of the Court House door in the County of Lauderdale, State of Mississippi, after having given due notice of such sale as may be required by law at the time of such sale, and to conclude such trust and make final distribution of the proceeds of the trusteed assets as hereinabove stipulated.

f. The board of directors of the new bank shall have the right, in their discretion and at any time, to require the trustees to render accounts to the board of directors of the new bank of the liquidation of such trusteed assets; to require, in their discretion, the trustees to enter into bond for the faithful discharge of their duties as trustees, premiums on such bond to be paid out of the trust estate; to remove any trustee at any time, with or without cause, and to fill all vacancies occasioned by their removal and/or resignation, and/or death, and/or inability to serve on the part of such trustees or any trustee.

g. For such 25% of the claim of the creditors, together with interest upon the full amount of the claims of said creditors as the same existed at suspension for the period any part of said claims remain unpaid, the trustees will issue to the creditor a transferrable certificate of participa-

tion in such trusteed assets, showing the extent and nature of the creditor's interest herein.

h. It is further understood and agreed that the new bank shall not be held accountable in any way for any default, negligence or fraud on the part of the trustees; and that [fol. 49] the trustees shall not be liable in any event, except for fraud and/or misappropriation of funds on their part.

i. The new bank and the trustees named by its board of directors are hereby irrevocably authorized to execute a trust agreement as to such assets agreed to be trusteed on the terms hereinabove set forth.

IV. The undersigned will accept the consideration named in paragraph III hereof in full of such claims of the undersigned against the First National Bank of Meridian, and hereby irrevocably authorizes such committee, and/or its successors in office as such committee, and/or the new bank, to receipt the Receiver of First National Bank of Meridian, and the Comptroller of the Currency in full therefor.

V. This agreement shall be and is binding on the undersigned, and the successors, legal representatives and assigns of the undersigned, subject to the following conditions:

a. That such new bank is organized and opened, purchases the assets of First National Bank of Meridian of the Receiver thereof, as provided by law, and assumes seventy-five per cent of the claims of the undersigned as agreed, and places in trust the stipulated amount of loans and discounts according to the tenor and terms hereof.

b. That in the event the new bank is not opened within four months of February 15th, 1931, such committee will transfer such claims and the Receiver's certificate issued therefor to the undersigned, and/or the successors, legal representatives or assigns of the undersigned.

[fol. 50] VI. This agreement shall bind and inure to the benefit of, the successors, legal representatives and assigns of the undersigned.

Witness the signature of the undersigned, this the — day of ——, 1931.

—— ——.

Witnesses: —— ——, —— ——.

EXHIBIT "H" TO COMPLAINT

The First National Bank in Meridian is now in process of organization and will after its organization and opening relieve the shareholders of the First National Bank of Meridian, of the statutory liability imposed upon them as shareholders in such suspended bank.

The undersigned being a shareholder of the First National Bank of Meridian, in consideration of being relieved from the statutory liability imposed on the undersigned as such shareholder, does hereby transfer, set over and assign unto the First National Bank in Meridian, its successors and assigns, all stock owned by the undersigned in the First National Bank of Meridian, Mississippi, represented by Certificate No. — for a total of — shares, such stock to be delivered to Levi Rothenberg, J. M. Wilson, and F. J. Hughes as a committee to be by them held in escrow until organization and opening of the First National Bank in Meridian, Miss., after which such stock so delivered to them is to be by them delivered to the First National Bank in Meridian, Miss., such transfer and assignment being made, however, on the following terms, and conditions, to-wit:

1. That the First National Bank in Meridian, Miss., is opened on or by June 15th, 1931.

[fol. 51] 2. That the undersigned be relieved and held harmless from any and all statutory liability as a shareholder of the First National Bank of Meridian, Mississippi.

3. That the First National Bank in Meridian will pay to the undersigned the pro rata share, if any, accruing to the undersigned from the assets agreed to be trusteed under the creditors agreement with creditors and depositors of the First National Bank of Meridian and Levi Rothenberg, F. J. Hughes and J. M. Wilson as a committee for the First National Bank in Meridian.

In the event that the First National Bank in Meridian is not opened as agreed, the stock delivered to the committee herein named is to be by such committee redelivered to the undersigned, his, her or its legal representatives, successors or assigns. This agreement shall become binding upon and

inure to the benefit of the successors, legal representatives and assigns of the undersigned.

Witness my signature, this the — day of ——, 1931.

—— ——.

EXHIBIT "I" TO COMPLAINT

Received from —— ——, a shareholder of the First National Bank of Meridian, Mississippi, Certificate No. —, representing a total number of — shares of stock of the First National Bank of Meridian, Mississippi of the par value of $100.00, delivered to the undersigned as a committee as provided in the agreement executed by the shareholder, such stock to be re-delivered by the undersigned [fol. 52] committee to such shareholder in the event that the agreement of transfer made by the shareholder is not complied with.

Witness our signatures, this — day of ——, 1931.

Levi Rothenberg, F. J. Hughes, J. M. Wilson, Committee.

NOTATION AS TO SUMMONS, ETC.

Summons was duly issued and served, returnable to the rules day of said Court to be held on the second Monday of August, 1933. Within the time allowed by the State Law to plead to such suit, defendant filed petition to remove.

IN CHANCERY COURT OF LAUDERDALE COUNTY

[Title omitted]

PETITION FOR REMOVAL TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI

Now comes First National Bank in Meridian, a corporation organized and existing under and by virtue of the laws of the United States of America and files this, its petition to remove the above entitled cause to the District Court of the United States for the Eastern Division of the Southern Dis-

[fol. 53] trict of the State of Mississippi and respectfully shows as follows:

1. That the principal of the amount involved exceeds the sum of $3,000.00 exclusive of interest and costs.

2. That the time to plead, answer or demur to this suit has not expired under the laws of the State of Mississippi.

3. That Lauderdale County, State of Mississippi, where the said suit is brought, is within the Eastern Division of the Southern District of the State of Mississippi, and that the defendant, First National Bank in Meridian, Mississippi, is domiciled and doing business in the Eastern Division of the Southern District of Mississippi.

4. That the said suit is a suit of a civil nature in equity, arising under the laws of the United States of America and is such a suit as the District Court for the Eastern Division of the Southern District of Mississippi has original jurisdiction thereof.

5. That it affirmatively appears from the original bill of complaint filed by the complainant against the defendant, that this is a suit of a civil nature in equity that arises under the Constitution and laws of the United States of America in this:

The complainant sues to recover taxes claimed to be due upon the shares of the capital stock, surplus and undivided profits of First National Bank of Meridian, a national banking corporation organized under the laws of the United States and domiciled and formerly doing business in Meridian, Mississippi, predicated upon certain assessments specifically set forth in the bill of complaint, made by the [fol. 54] taxing officers of the State of Mississippi, County of Lauderdale and City of Meridian for the year 1930, specifically alleging that such taxes by reason of certain facts alleged in the bill of complaint were due to have been paid and should have been paid by said First National Bank of Meridian prior to its becoming insolvent and being placed in the hands of a receiver by the Comptroller of the Currency of the United States.

The bill alleges that such First National Bank of Meridian became insolvent and was placed in the hands of a receiver without the payment of said taxes and claims that

said bank was due to have paid said taxes prior to such insolvency. Said First National Bank of Meridian which bank is alleged to have originally become liable for such taxes, is not made a party to this suit nor is the receiver of such bank. It affirmatively appears that the complainant without suing said First National Bank of Meridian or the receiver thereof, has by his bill, brought suit for such taxes against this defendant, First National Bank in Meridian, a national banking corporation organized and existing under the laws of the United States of America and domiciled and doing business in the City of Meridian and State of Mississippi, on the allegation and theory that said First National Bank in Meridian became liable to pay such taxes by virtue of the terms of a contract between this defendant and one, C. P. Rogers, the Receiver of the First National Bank of Meridian, made in the course of the liquidation and winding up of the affairs of First National Bank of Meridian, which contract is exhibited as Exhibit F to the bill of complaint and made a part of the bill of complaint.

From the bill of complaint and Exhibit F thereto, it affirmatively appears that the liability or not of the First National Bank of Meridian to pay such taxes as are claimed [fol. 55] by complainant turns upon the interpretation and application of Section 5219 and amendments thereof of the Revised Statutes of the United States of America; that the liability of the Receiver of the First National Bank of Meridian to pay such taxes out of the assets of First National Bank of Meridian in his hands for liquidation and the liability of such assets in the hands of the Receiver, turns upon the proper interpretation and application of Section 5219 and amendments thereto of the laws of the United States of America, and, also, upon the proper interpretation and application of the statutes and laws of the United States of America with reference to the winding up and liquidation of insolvent national banks; that the First National Bank in Meridian did not come into existence and was not organized until after First National Bank of Meridian had become insolvent without the payment of such taxes, nor until after C. P. Rogers had been appointed the receiver thereof, and that First National Bank in Meridian was organized for the purpose of purchasing of the Receiver of the First National Bank of Meridian in furtherance of such receiver's liquidation of the assets of First

National Bank of Meridian all the assets of such First National Bank of Meridian and that such purchase by First National Bank in Meridian of such assets of First National Bank of Meridian from the receiver thereof was pursuant to the written consent of the Comptroller of the Currency of the United States and an order of the United States District Court for the Eastern Division of the Southern District of Mississippi entered in such matter during the course of the liquidation of the affairs of the First National Bank of Meridian and the organization and opening the First National Bank in Meridian, and that whether or not First National Bank in Meridian is liable under the contract, Exhibit F to the bill of complaint, for such taxes further turns upon the proper interpretation and construction of [fol. 56] such contract under the laws of the United States of America pertaining to the assessment of the shares of the capital stock of national banks and pertaining to the winding up of and liquidation of insolvent national banks and pertaining to the organization and opening of new banks; that the nature and purpose of the complainant's suit as disclosed by the allegations thereof and the exhibits to the bill of complaint, is one wherein it is sought further to wind up and liquidate the affairs of the insolvent First National Bank of Meridian by making this defendant, which purchased the assets of the insolvent First National Bank of Meridian from the receiver thereof as aforesaid, respond by reason thereof, and out of the assets so purchased for the alleged taxes, which it is alleged that the insolvent First National Bank of Meridian should have paid before its insolvency; that by reason of all of the foregoing facts it affirmatively appears from the complainant's own pleadings that the suit is for the winding up and liquidation of the affairs of an insolvent national bank as against the purchaser and holder of its assets under a contract with the receiver of such insolvent bank, and is a suit of a civil nature that arises under the Constitution and laws of the United States of America and as such is removable by this defendant into the District Court of the United States for the Eastern Division of the Southern District of Mississippi.

6. Petitioner tenders and files herewith its bond with good and sufficient surety in the penalty of $500.00, conditioned as required by the statutes of the United States.

7. Written notice of said petition and bond for removal has been given to the complainant prior to filing the same.

Wherefore, petitioner prays that the Court may accept said petition and bond and may proceed no further in such [fols. 57 & 58] suit, but that the same may be removed to the said District Court of the United States, pursuant to the statutes of the United States in such cases made and provided, and petitioner will ever pray, etc.

Bozeman & Cameron, Wilbourn, Miller & Wilbourn,
Solicitors for Petitioner.

Duly sworn to by W. D. Cook. Jurat omitted in printing.

Bond on removal for $500.00, approved September 9, 1933, omitted in printing.

[fol. 59] In Chancery Court of Lauderdale County

[Title omitted]

Notice of Removal

To James B. Gully, State Tax Collector, and Messrs. Marshall W. Amis and J. C. Floyd, His Attorneys of Record:

Please take notice that the defendant, First National Bank in Meridian, will on or before the return day, to-wit: September 9, 1933, file their petition and bond for removal of this cause to the District Court of the United States in the proper district, to-wit: The Eastern Division of the Southern District of Mississippi.

Copies of said petition and bond are attached hereto.

This the 9th day of September, A. D. 1933.

Boseman & Cameron, Wilbourn, Miller & Wilbourn,
Attorneys for First National Bank.

We, the undersigned attorneys of record for James B. Gully, State Tax Collector, complainant, hereby acknowl-

edge receipt of the foregoing notice, together with copy of petition and bond, this the 9 day of September A. D. 1933.

Marshall W. Amis, J. C. Floyd, Attorneys for Complainant.

[fol. 60] In Chancery Court of Lauderdale County

[Title omitted]

Order of Removal

This day this cause came on to be heard before the Clerk on Rules Day, the second Monday and 11th day of September, 1933, on the petition of First National Bank in Meridian, to remove said cause to the District Court of the United States for the Eastern Division of the Southern District of Mississippi, and it appearing unto the Clerk that First National Bank in Meridian has filed proper petition on Saturday, September 9, 1933, for removal, with good and sufficient bond approved by the Presiding Judge, Chancellor A. B. Amis, Sr., with W. D. Cook and L. Rothenberg as sureties thereon, in the penalty of Five Hundred Dollars: and that notice of the filing of such petition and bond was served upon the attorneys for the plaintiff in said cause, together with a copy of the petition and bond attached thereto, and that their acceptance of service thereof is on file among the papers in this cause:

It is ordered, adjudged and decreed by the Clerk in vacation that this cause be and it is hereby removed into the District Court of the United States for the Eastern Division of the Southern District of the State of Mississippi; and that the Clerk certify and file a proper transcript thereof in said Court within thirty days of September 9, 1933.

Ordered, adjudged and decreed by the Clerk in vacation, this the 11th day of September, 1933.

Mack Cameron, Clerk of Chancery Court of Lauderdale County, Mississippi.

[fol. 61] Clerk's certificate to foregoing transcript omitted in printing.

NOTATION AS TO FILING OF TRANSCRIPT, ETC.

The transcript from the Lauderdale County Chancery Court was filed in the District Court within the time required by law, to wit, on September 30, 1933.

The defendant filed in the District Court cost bill from the Chancery Court of Lauderdale County, Mississippi, showing cost paid by it in the sum of $27.65.

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION OF THE SOUTHERN DISTRICT FOR MISSISSIPPI

IN Equity. No. 122

JAMES B. GULLY, State Tax Collector,

vs.

FIRST NATIONAL BANK IN MERIDIAN

NOTICE OF MOTION TO REMAND—Filed October 16, 1933

To Messrs. Wilbourn, Miller & Wilbourn and Bozeman & Cameron, Attorneys of Record for the First National Bank in Meridian:

You will take notice that the complainant, James B. Gully, State Tax Collector, has filed with the Clerk of said Court his motion to remand this cause to the Chancery [fol. 62] Court of Lauderdale County, Mississippi, a copy of said motion being hereto attached, and that the said motion will be called up for hearing before the Honorable Allen Cox, Judge of said Court, at Chambers in Baldwin, Mississippi at 9 o'clock, A. M. on Saturday, the 21st day of October, 1933.

Marshall W. Amis, J. C. Floyd, Attorneys for Complainant.

We hereby acknowledge service of the foregoing notice. This Oct. 16th, 1933.

Wilbourn, Miller & Wilbourn, by C. C. Miller, Bozeman & Cameron, by A. S. Bozeman, Jr.

IN UNITED STATES DISTRICT COURT

MOTION TO REMAND TO STATE COURT

Now comes the complainant, James B. Gully, State Tax Collector, by his attorneys, and appearing herein specially for sole and only purpose of this motion, moves the Court to remand this cause to the Chancery Court of Lauderdale County, Mississippi, and as grounds for said motion, says:

1st. He denies that the said suit is such a suit as the District Court for the Eastern Division of the Southern District of Mississippi would have original jurisdiction thereof.

2nd. He denies that it affirmatively appears from the original bill of complaint that this is a suit of a civil nature in equity that arises under the Constitution and the laws of the United States of America.

Marshall W. Amis, J. C. Floyd, Attorneys for Complainant.

[fol. 63] IN UNITED STATES DISTRICT COURT

ORDER OVERRULING MOTION TO REMAND—Filed October 23, 1933

This day came on to be heard the motion of the *the* argument of counsel thereon, doth now hereby — this cause to the Chancery Court of Lauderdale County, State of Mississippi, and it appearing to the Court that notice of the hearing was duly given and that the parties appeared by their counsel, and the Court having heard and considered the said motion and the argument of counsel thereon, doth now hereby Order, Adjudge and Decree that the said motion to remand be and it is hereby overruled.

This the 21st day of October, 1933.

Allen Cox, Judge.

IN UNITED STATES DISTRICT COURT

ANSWER OF FIRST NATIONAL BANK IN MERIDIAN—Filed October 27, 1933

And now comes First National Bank in Meridian and for answer to so much of the original bill of complaint filed

[fol. 64] against it in this case as it is advised it is needful to answer, answering says:

1. It admits the allegations of paragraph 1 of the bill of complaint.

2. It admits the allegations of paragraph 2 of the original bill of complaint.

3. It admits the allegations of paragraph 3 of the bill of complaint in so far as it relates to the general powers of the City of Meridian. But it denies that the City of Meridian had any lawful authority to levy and collect the taxes which it did levy in this case against First National Bank of Meridian, which in this case, the plaintiff endeavors to collect.

4. It admits the allegations of paragraph 4 of the bill of complaint in so far as it relates to the general powers of the County of Lauderdale with reference to levying and collecting taxes upon the taxable property in the county, but it denies that the County of Lauderdale had any lawful authority to levy the tax against the First National Bank of Meridian which, it is now, by this bill, sought to collect.

5. It admits the allegations of paragraph 5 of the bill of complaint in so far as it relates to the general powers of Meridian Separate School District, but it denies that during the year 1930 said Meridian Separate School District was duly authorized to levy and collect the taxes which it is alleged in the bill of complaint it did levy against First National Bank of Meridian and which this bill seeks now to collect.

6. It admits the allegations of paragraph 6 of the bill of complaint.

[fol. 65] 7. This defendant specifically denies that during the year 1930 the said First National Bank of Meridian was subject to taxation by the State of Mississippi, by the County of Lauderdale, by the City of Meridian and by the Meridian Separate School District upon its capital stock, surplus and undivided profits in the manner provided by the laws of the State of Mississippi, and the charter and ordinances of the said city.

8. It denies that the purported assessment against First National Bank of Meridian for state and county taxes for

the year 1930 purporting to be upon page 12 of the personal assessment roll of Lauderdale County for the year 1930 and specifically set out in paragraph 8, was made in strict compliance with the laws of the State of Mississippi. It denies that the laws of the State of Mississippi authorize the making of such assessment. It denies that said assessment has any validity whatever and sets up that such assessment was not only invalid and contrary to the laws of the State of Mississippi, and to the laws of the United States, Section 5219 of the Revised Statutes of the United States, but shows that such assessment was excessive and that said property had no such value as the said assessment purported to show.

9. It admits the allegations of paragraph 9 of the bill of complaint.

10. It admits the allegations of paragraph 10 of the bill of complaint. It shows, however, that none of the acts alleged to have been done in paragraphs 9 and 10 of the bill of complaint and neither of the orders exhibited in connection with paragraph 10 of the bill of complaint were effective to make legal the aforesaid void and excessive assessment purported to have been made against First National Bank of Meridian.

[fol. 66] 11. It admits the allegations of paragraph 11 of the bill of complaint, but avers that nothing therein set forth, and nothing in Exhibit "B" attached thereto, had the effect to make legal the void and excessive assessment purported to have been made against First National Bank of Meridian as set forth in paragraph 8 of the bill of complaint.

12. It admits the allegations of paragraph 12 of the bill of complaint, but avers that nothing therein contained and nothing set forth in Exhibit "C" thereto could or did make legal and valid the unlawful and void assessment purported to have been made against First National Bank of Meridian, set forth in paragraph 8 of the bill of complaint.

13. It admits the allegations of paragraph 13 of the bill of complaint, but avers that nothing therein contained could or did make legal and valid the unlawful and void assess-

ment purported to have been made against First National Bank of Meridian, set forth in paragraph 8 of the bill of complaint.

14. It denies that by reason of the allegations contained in the first thirteen paragraphs of the bill of complaint or by reason of any other facts or circumstances, there became due the State of Mississippi the sum of $4,321.08 as taxes for the year 1930 against said capital stock, surplus and undivided profits of said First National Bank of Meridian. It shows that the alleged assessment and levy of such tax was absolutely null and void and in violation of the laws of the State of Mississippi and the statutes of the United States, especially Section 5219 of the Revised Statutes of the United States, and that in addition to being void, such tax was, also, excessive in that said capital stock, surplus and undivided profits of the said First National Bank of Meridian were not of the value fixed upon them in and by such void assessment.

[fol. 67] 15. It denies that by reason of the allegations contained in the first thirteen paragraphs of the bill of complaint or by reason of any other facts or circumstances, there became due the County of Lauderdale the sum of $8,642.16 as taxes for the year 1930 against said capital stock, surplus and undivided profits of said First National Bank of Meridian. It shows that the alleged assessment and levy of such tax was absolutely null and void and in violation of the laws of the State of Mississippi and the statutes of the United States, especially Section 5219 of the Revised Statutes of the United States, and that in addition to being void, such tax was, also, excessive in that said capital stock, surplus and undivided profits of the said First National Bank of Meridian were not of the value fixed upon them in and by such void assessment.

16. The defendant denies that the taxes alleged to be due the State of Mississippi and the County of Lauderdale in the 14th and 15th paragraphs of the bill of complaint were due by the shareholders of the said First National Bank of Meridian, and denies that the First National Bank of Meridian was by law liable to pay said taxes as the agent of each of its shareholders, and was authorized to pay same out of their individual profit account, or to charge same to their expense account, or to any other account

which the shareholders might have with said bank, all in proportion to their ownership. This defendant shows that said assessment did not conform to the law of the State of Mississippi, nor to the laws of the United States, in that it does not purport to be and was not in fact, an assessment against the shareholders of the said First National Bank of Meridian. Defendant avers further that said assessment violated both the laws of the State of Mississippi and the laws of the United States, in that on its face, it purports to be not an assessment against the shareholders but a direct [fol. 68] assessment against the First National Bank of Meridian. Defendant further states that the said assessment was further excessive in that the said capital stock, surplus and undivided profits of the said first National Bank of Meridian did not have the value alleged in said assessment.

17. Defendant denies the allegation that under the law, the said taxes were due the State of Mississippi and the County of Lauderdale and became and were debts due by the several shareholders of the First National Bank of Meridian to the State of Mississippi and the County of Lauderdale.

18. Defendant denies that it became and was the duty of the First National Bank of Meridian to pay the amount of said taxes to the Sheriff and Tax Collector of Lauderdale County on or before the 1st day of December, 1930 and to charge same to the individual profit accounts of its said shareholders or expense accounts or any other accounts said shareholders might have with said bank.

19. This defendant submits that the allegations of the 19th paragraph of the bill of complaint are too vague, indefinite and uncertain to call for answer by this defendant, and that this defendant is not charged with knowledge or with any duty to know what sums of money or dividends or deposits were at any time in the possession of the First National Bank of Meridian due to its shareholders during the period from January 1, 1930 to January 13, 1931.

This defendant, however, is informed and believes that a great majority of the shareholders of the First National Bank of Meridian did not have any deposits whatever with said bank during the period from January 1, 1930 to Janu- [fol. 69] ary 13, 1931, and this defendant denies that on

January 13, 1931, the said First National Bank of Meridian had in its possession either dividends or money on deposit in said bank belonging to the shareholders thereof, and denies that it had any funds in its possession or under its control on January 13, 1931, the day the said bank suspended business as a going concern, which were due to the shareholders of said bank, or which were in any sense liable on any theory to be paid out as taxes for such shareholders, and denies that there was any liability of the shareholders on such alleged taxes and denies there was any liability on said First National Bank of Meridian as to such taxes and denies there was any authority or right or duty in the First National Bank of Meridian to pay the alleged unlawful taxes alleged to be due by the shareholders of such institution. This defendant denies that any taxes had been lawfully assessed and levied against the shareholders of said First National Bank of Meridian for the year 1930.

20. The defendant denies that it was the duty of the First National Bank of Meridian to pay the sum of $12,963.24 to the Sheriff and Tax Collector of Lauderdale County on or before December 1, 1930, out of the funds and moneys of its shareholders then and theretofore in its possession, and denies that it had, on or before December 1, 1930, in its possession any funds of its shareholders which it had any right to pay to the said Sheriff and Tax Collector of Lauderdale County. It admits the First National Bank of Meridian wholly failed, neglected and refused to pay said taxes and submit that in so doing, it acted properly and correctly. It denies that First National Bank of Meridian became and was liable and indebted directly and primarily unto the State of Mississippi and County of Lauderdale for the full amount of said taxes in the sum of $12,963.24 or any part thereof.

[fol. 70] 21. It admits that the City Tax Assessor and Collector of the City of Meridian assessed the capital stock, surplus and undivided profits of the First National Bank of Meridian claimed and alleged to be due the City of Meridian and to the Meridian Separate School District for the year 1930 as set up and claimed in paragraph 21 of the bill of complaint. But it denies that in so doing, the City of Meridian proceeded according to law. It denies that the City of Meridian had any lawful authority to make such

assessment. It denies that said assessment was a legal assessment. It denies that said assessment was authorized by any law of the State of Mississippi or any charter provisions of the City of Meridian or any authority conferred by statute upon the Meridian separate School District, or by virtue of any law of the United States, but on the contrary avers that said assessment was wholly null and void in that it specifically violated Section 5219 of the Revised Statutes of the United States, and is in direct conflict with the statutes of the State of Mississippi. This defendant, also, shows that said assessment is excessive and that said capital stock, surplus and undivided profit sought to be assessed in such alleged assessment, had no such value as is therein described to them and that there was no liability for the alleged claimed taxes set up in said paragraph 21 of the bill of complaint amounting to $13,504.75 or any part thereof.

22. It admits the allegations of the 22nd paragraph of the bill of complaint but shows that nothing therein contained could possibly have the effect to validate the void assessment purported to have been made and set forth in paragraph 21 of the bill of complaint.

23. It admits the allegations of the 23rd paragraph of the bill of complaint but shows that nothing therein contained could possibly have the effect to validate the void assess-
[fol. 71] ment purported to have been made and set forth in paragraph 21 of the bill of complaint.

24. It admits the allegations of the 4th paragraph of the bill of complaint but shows that nothing therein contained could possibly have the effect to validate the void assessment purported to have been made and set forth in paragraph 21 of the bill of complaint.

25. It admits the allegations of the 25th paragraph of the bill of complaint but shows that nothing therein contained could possibly have the effect to validate the void assessment purported to have been made and set forth in paragraph 21 of the bill of complaint.

26. This defendant denies that by reason of the allegations of the bill of complaint in paragraphs 21 to 25, inclusive, or by reason of any other facts or circumstances alleged in the bill of complaint, there became due to the

City of Meridian the sum of $8,102.85 as taxes for the year 1930 against the capital stock, surplus and undivided profits of said First National Bank of Meridian. It denies that anything contained in paragraphs 21 to 25, inclusive, of the bill of complaint could validate the manifestly void assessment set forth in the 21st paragraph of the bill of complaint. It submits that said assessment was not in accordance with any law of the State of Mississippi and was not an assessment against the shareholders of the First National Bank of Meridian and it was for that reason wholly null and void. It submits that said purported assessment was directly against the First National Bank of Meridian for which there was no warrant in either the state or the national law and which was in violation of the state statutes and of Section 5219 of the Revised Statutes of the United States. It submits that said assessment was excessive and illegal, also, in that the value therein ascribed [fol. 72] to such capital stock, surplus and undivided profits was incorrect and it had no such value.

27. This defendant denies that by reason of the allegations of the bill of complaint in paragraphs 21 to 25, inclusive, or by reason of any other facts or circumstances alleged in the bill of complaint, there became due to the Meridian Separate School District the sum of $5,401.90 as taxes for the year 1930 against the capital stock, surplus and undivided profits of said First National Bank of Meridian. It denies that anything contained in paragraphs 21 to 25, inclusive, of the bill of complaint could validate the manifestly void assessment set forth in the 21st paragraph of the bill of complaint. It submits that said assessment was not in accordance with any law of the State of Mississippi and was not an assessment against the shareholders of the First National Bank of Meridian and it was for that reason wholly null and void. It submits that said purported assessment was directly against the First National Bank of Meridian for which there was no warrant in either the state or the national law and which was in violation of the state statutes and of Section 5219 of the Revised Statutes of the United States. It submits that said assessment was excessive, and illegal, also, in that the value therein ascribed to such capital stock, surplus and undivided profits was incorrect and it had no such value.

28. It denies that said taxes were due to the City of Meridian and the Meridian Separate School District by the shareholders of the First National Bank of Meridian. It denies that the First National Bank of Meridian was by law and the charter amendments and ordinances of the City of Meridian, liable to pay said taxes as the agent of its shareholders, or was authorized to pay same out of their individual profit account, or to charge same to their [fol. 73] expense account or to any other account which said shareholders might have with said bank, all in proportion to their ownership. It denies that any such liability ever arose on the part of First National Bank of Meridian or existed at any time. It denies that either the shareholders of said bank, or said bank owed such taxes or any part thereof.

29. It denies that under the law, the charter amendments, and ordinances of the City of Meridian, the taxes due the City of Meridian and Meridian Separate School District either became, or were, debts due by the shareholders of First National Bank of Meridian to the City of Meridian and Meridian Separate School District.

30. It denies that it either became, or was, the duty of First National Bank of Meridian to pay the amount of said taxes alleged to be due the City of Meridian and the Meridian Separate School District to the City Tax Assessor and Collector, on or before December 1, 1930, or at all, and denies it was the duty of said bank to charge the same to the individual profit accounts of its said shareholders, or to their expense accounts, or to any other accounts said shareholders might have had with said bank.

31. This defendant submits that the allegations of the 31st paragraph of the bill of complaint are too vague, indefinite and uncertain to call for answer by this defendant, and that this defendant is not charged with knowledge or with any duty to know what sums of money or dividends or deposits were at any time in the possession of the First National Bank of Meridian due to its shareholders during the period from January 1, 1930 to January 13, 1931.

This defendant, however, is informed and believes that a great majority of the shareholders of the First National [fol. 74] Bank of Meridian did not have any deposits what-

ever with said bank during the period from January 1, 1930, to January 13, 1931, and this defendant denies that on January 13, 1931, the said First National Bank of Meridian had in its possession either dividends or money on deposit in said bank belonging to the shareholders thereof, and denies that it had any funds in its possession or under its control on January 13, 1931, the day the said bank suspended business as a going concern, which were due to the shareholders of said bank, or which were in any sense liable on any theory to be paid out as taxes for such shareholders, and denies that there was any liability of the shareholders on such alleged taxes and denies that there was any liability on said First National Bank of Meridian as to such taxes and denies there was any authority or right or duty in the First National Bank of Meridian to pay the alleged unlawful taxes alleged to be due by the shareholders of such institution. This defendant denies that any taxes had been lawfully assessed and levied against the shareholders of said First National Bank of Meridian for the year 1930.

32. The defendant denies that it was the duty of the First National Bank of Meridian to pay the sum of $13,504.75 to the City Tax Assessor and Collector of the City of Meridian on or before December 1, 1930, out of the funds and monies of its shareholders then and theretofore in its possession, and denies that it had, on or before December 1, 1930, in its possession any funds of its shareholders which it had any right to pay to the said City Tax Assessor and Collector of the City of Meridian. It admits the First National Bank of Meridian wholly failed, neglected and refused to pay said taxes and submits that in so doing, it acted properly and correctly. It denies that First National Bank of Meridian became and was liable and indebted directly and primarily unto the City of Meri- [fol. 75] dian and the Meridian Separate School District for the full amount of said taxes in the sum of $13,504.75, or any part thereof.

33. It admits the allegations of paragraph 33 of the bill of complaint. It shows that the active receivership of the First National Bank of Meridian was closed by the Comptroller of the Currency on the — day of ——, 19—, long prior to the filing of this suit against this defendant.

34. It admits the allegations of the 34th paragraph of the original bill of complaint.

35. It admits the allegations of paragraph 35 of the bill of complaint and shows that the contract, Exhibit "F" therein referred to was dated the 4th day of June, 1931.

36. This defendant denies that by the terms of the contract, Exhibit "F" to the bill of complaint, this defendant, First National Bank in Meridian assumed and became liable for all of the debts and liabilities of the First National Bank of Meridian, including among others, its debt and liability for all of the taxes hereinbefore mentioned. It denies that it made any commitments or entered into any agreements in and by such contract, whereby it obligated itself to pay the alleged taxes herein sued for, or any part thereof. It denies that such contract is susceptible of any such interpretation. It denies that First National Bank of Meridian had any such debt or liability for the taxes herein sued for, and expressly denies that in and by the contract, Exhibit "F", it agreed and obligated it[illegible]o pay same.

37. This defendant denies that it is under obligation to pay the taxes herein sued for or any part thereof, but admits that it has not paid them.

[fol. 76] 38. It admits the allegations of paragraph 38 of the bill of complaint in so far as it alleges the non-payment of the alleged taxes, but denies that part of the allegations of paragraph 38 of the bill of complaint wherein it is charged that said taxes remain past due. It denies that said taxes were ever due at any time.

39. It denies that a committee composed of Levi Rothenberg, F. J. Hughes and J. M. Wilson, acting for the use and benefit of said First National Bank in Meridian, purchased of and from all of the shareholders of the First National Bank of Meridian their several shares of stock, as alleged in paragraph 39 of the bill of complaint, but admits, however, that certain of the shareholders of the First National Bank of Meridian did transfer and assign unto the said Levi Rothenberg, F. J. Hughes and J. M. Wilson, as a committee, their shares of stock in the old First National Bank of Meridian, after it had suspended business and that the form of such assignment was, and

is, as shown in and by Exhibit "H" to the bill of complaint. It denies, however, that such form of assignment constitutes an assumption on the part of First National Bank in Meridian of any taxes, if any, due by the shareholders of the old First National Bank of Meridian. It denies that the shareholders then owed any such taxes or were liable for any such taxes.

40. It denies that there was any purchase and sale to this defendant of the shares of stock of the shareholders of the old First National Bank of Meridian. It denies that such shares of stock had any value whatever at the time of the transfers thereof to this defendant. It admits that such transfers were evidenced by written instruments in the form of Exhibits "H" and "I" to the bill of complaint, but it denies that such instruments are contracts of purchase and sale within the meaning of the law and [fol. 77] denies that such instruments constitute an assumption of any taxes that might be due, if any, by the shareholders of the old First National Bank of Meridian.

41. It admits that the First National Bank in Meridian was duly organized and began business on June 12, 1931. It admits that it ratified and confirmed the acts of the committee in taking over the transfer of the shares of stock of the old First National Bank of Meridian but denies that such transfers of such stock were contracts of purchase and sale and denies that the acts of the committee so ratified and confirmed by this defendant, had the effect, and were of the nature and meaning ascribed to them in the bill of complaint, and it expressly denies that this defendant did thereby assume and undertake to discharge any and all liabilities of every kind imposed by statute upon the shareholders of the First National Bank of Meridian by reason of their ownership of said shares and expressly denies that among such liabilities so alleged to have been assumed was, and is, the liability to pay the taxes to the State of Mississippi, County of Lauderdale, City of Meridian and Meridian Separate School District herein sued for. It denies that there was any liability for said taxes on the part of either the shareholders of First National Bank of Meridian or of First National Bank of Meridian.

42. It admits that the various acts of the Legislature and charter amendments listed in paragraphs lettered from

"A" to "CC", inclusive, exist. But denies that such charter, charter amendments and ordinances of the City of Meridian constitute authority for the making of the alleged assessment and tax levy by the City of Meridian and the Meridian Separate School District as set forth in paragraph 21 of the bill of complaint. This defendant submits that such charter, charter amendments and ordinances are [fol. 78] null and void in that they in no way conform to the provisions of Section 5219 of the Revised Statutes of the United States and in that they do not confer the authority to make the alleged assessment herein set up as the predicate for the collection of the taxes herein claimed, for and on behalf of the City of Meridian and the Meridian Separate School District and denies the legality, validity and binding effect of all of such charter, charter amendments and acts of the Legislature pertaining to the City of Meridian as in any way authorizing or validating the alleged assessment and the alleged levy of said taxes as against the said First National Bank of Meridian.

43. This defendant further sets up, shows unto the Court, and pleads that the alleged taxes, alleged to be due to the State of Mississippi, County of Lauderdale, City of Meridian and Meridian Separate School District, and herein sought to be recovered, are illegal, and void and uncollectible, in that the amendment and tax levy thereof violate Section 5219 of the Revised Statutes of the United States as amended in this:

That the said taxes herein sued for were all sought to be imposed in and by the alleged assessment and levy thereof upon the shares of the capital stock of the First National Bank of Meridian, a national banking institution, organized under the laws of the United States, domiciled and doing business in the City of Meridian at a greater rate of taxation than is, or was, then assessed and levied upon other monied capital in the hands of individual citizens of the State of Mississippi, coming into competition with the business of national banks, for the reasons as follows, to-wit:

As of January 1, 1930, and for a number of years prior thereto and ever since upwards of ten million dollars of monied capital in the hands of individual citizens of the [fol. 79] State of Mississippi, coming into competition with the business of national banks, was actually employed and

engaged in an investment business in competition with the business of national banks. That such monied capital in the hands of individual citizens of the State of Mississippi, so employed and engaged in business in competition with the business of national banks was being actively employed and engaged in such business in competition with national banks all over the State of Mississippi on, prior and since January 1, 1930, the effective date of assessments for personal taxes against property owners in the State of Mississippi. That a large quantity of such monied capital, approximately, two million dollars in amount, was then and there, on, prior to and since January 1, 1930, actually engaged and employed in competition with the business of national banks in Meridian and Lauderdale County and the vicinity thereof and within the trade territory wherein First National Bank of Meridian was then and there engaged in the banking business. That the aforesaid large amounts of monied capital so employed and engaged in business in competition with national banks was so employed and engaged in such business by individual citizens and persons carrying on an investment business and did not merely represent personal investments of the individual owners thereof; that such monied capital was actually being invested then and there, on and prior and since January 1, 1930, in the trade territory of First National Bank of Meridian and in the State of Mississippi in active competition with the business of national banks in the making of numerous loans and investments such as are ordinarily and customarily made by national banks in the carrying on of their business, and were made at a rate of interest not exceeding the sum of 6% and such monied capital so employed and engaged in active competition with national banks was so employed as that all of it was then and there by virtue of the [fol. 80] statutes of the State of Mississippi, by reason of the rate of interest not being in excess of the rate of 6%, exempt from any and all taxes whatsoever. The statutes of the state of Mississippi specifically exempts such monied capital in and by paragraph "V" of Section 3108 of the Code of 1930, such paragraph reading as follows:

"(x) All state, county, municipal, levee, drainage and all school bonds or other government obligations and all bonds and/or evidences of debt issued by any church or church organization of this state, and all notes and evidences of in-

debtedness bearing a rate of interest not greater than six per cent per annum, and all money loaned at a rate of interest not exceeding six per cent per annum; and all stocks in or bonds of foreign corporations or associations shall be exempt from all ad valorem taxes."

That said section of the code so exempting such moneyed capital was in force as of January 1, 1930, and for a number of years prior thereto, and has been since. That the effect of it has been to encourage and build up the employment of large amounts of monied capital in the State of Mississippi in business in competiton with the business of national banks. That numerous persons were, as of January 1, 1930, before and since, actively engaged in the State of Mississippi in employing moneyed capital in the purchase of bonds, notes and evidences of indebtedness and the making of loans in competition with the business of national banks at a rate of interest of 6% thereby gaining and claiming under the terms of the statutes of the State of Mississippi an exemption from any and all taxes, whereas, the laws of the State of Mississippi at the same time, Section 3138 thereof, provided for the assessment of the monied capital employed in the banking business and shares of stock in national banks at a much higher rate, all [fol. 81] as provided in Section 3138 of the Code of 1930, such section reading as follows:

"3138. Banks—how taxed.—The president, cashier or other officer having like duties, of each bank or banking association in this state, existing by the laws of this state, shall deliver on or before the first day of April of each year to the assessor of taxes of the county in which it is located, a statement on the form prescribed by the state tax commission under oath, of the number and amount of all the shares of its capital stock paid in, or if it be not a corporation or joint stock company, then the amount of its capital, and of the sum of all undivided profits or surplus or accumulation of any sort constituting part of the assets of the bank, excluding its real estate; and the value of such shares estimated at par and increased by the proportion of the par value of all the shares of stock to the said surplus fund or accumulation, or of the amount of its capital so increased, shall be the basis of the taxation of such shares to the bank or of the capital to the owner thereof in case the

bank be not a corporation or joint stock company, and the taxes levied on such bank or banking association shall be a first lien on its assets, but if the shares of such bank or banking association are of less value than par, they shall be valued accordingly. Provided, nevertheless, in case of such bank or banking association existing under the laws of the United States, a precisely similar amount shall be assessed upon and collected from the shareholders thereof at the domicile of the bank as would have been assessed upon and collected from the said bank had it been created under the laws of the state of Mississippi; but each said bank and banking association shall, nevertheless, be liable to pay any taxes as the agent of each of its shareholders, and may pay the same out of their individual profit account, or charge the same to their expense account or to the account of such shareholder in proportion to their ownership."

[fol. 82] That in and by the laws of the State of Mississippi, corporations and joint stock companies, other than banks, are taxed pursuant to section 3136 of the Code of 1930 of the State of Mississippi, such section reading as follows:

"3136. Corporations and joint stock companies, how taxed.—The property of each corporation or joint stock company (whether organized under the laws of this state or any other state or country) shall be assessed and taxed as that of a person; and the laws, providing for the assessment and collection of taxes on the property of persons, shall apply to the assessment and collection of taxes on the property of corporations and joint stock companies; and all shares or certificates of stock issued by any such corporation or joint stock company shall be exempt from taxation and shall not be returned for assessment. The president, secretary or other officer of the same shall render, under oath, the tax list, in its name, of its property real or personal or both subject to taxation, to the assessor at the same time that persons are required to render their assessments of their property. Its land and tangible personal property shall be assessed and taxed where situated on the first day of January of the year; and the accounts, notes, bonds, shares or certificates of stock, bank deposits, rights, money or other intangible property subject to taxation owned by a corporation or joint stock company organized

under the laws of this state shall be assessed and taxed at its domicile; but any such intangible personal property, which would be exempt from taxation according to law, if owned by a person shall be exempt from taxation when owned by a corporation or joint stock company and shall not be returned for assessment. Such intangible personal property owned by a corporation or joint stock company organized under the laws of any state or country other than Mississippi shall be exempt from taxation and shall not be [fol. 83] returned for assessment. This section shall not apply to persons, firms or corporations assessed by the state railroad assessors or domestic insurance companies; but the shares or certificates of stock issued by a railroad, sleeping car, express, telephone or telegraph company or a freight car line or a railroad equipment company or a domestic insurance company, shall be exempt from taxation in the hands of the stockholder and shall not be returned for taxation by such stockholder."

That the aforesaid quoted provisions of the laws of the State of Mississippi in Sections 3108, 3136 and 3138 of the Code of 1930, were all in effect on January 1, 1930, and before and since. That in and by Section 3136 of the Code of 1930, no corporation or joint stock company nor individual was taxable at all on any notes, bonds, evidences of indebtedness, choses in action not bearing a rate of interest greater than six per centum and all corporations and joint stock companies in making return for taxes of their property were entitled to treat as exempt all that portion of their capital invested in notes, bonds, evidences of indebtedness and choses in action which did not bear a rate of interest in excess of six per centum. That as a result of the provisions of the taxing laws of the State of Mississippi and the exemptions from taxes under the laws of the State of Mississippi and the practices of the taxing authorities of the State of Mississippi, enormous sums of moneyed capital, exceeding ten millions of dollars in amount, employed in competition with the business of national banks was not required to bear any of the burden of the taxation; whereas, the same laws sought to discriminate against moneyed capital and the shares of stock of national banks by an effort to assess them pursuant to the terms of Section 3138 of the Code of 1930. That as a

result thereof, there has been a violation of the provisions [fol. 84] of Section 5219 of the Revised Statutes of the United States as amended, in attempting to tax, under the laws of the State of Mississippi, the shares of stock of national banks at a greater rate than other capital in the hands of citizens of the state employed in competition with the national banks are taxed. That such effort to tax said shares of capital stock is, therefore, discriminatory and violative of said statutes of the United States and void and that by reason thereof, the attempted assessment of the shares of the capital stock of First National Bank of Meridian is not only void for the reasons herein first set forth in that it does not conform either to the laws of the State of Mississippi or of the United States, but that it is, also, discriminatory and void in that it expressly and definitely, for the reasons alleged in this paragraph, discriminates contrary to the statutes of the United States against the moneyed capital employed in the business of national banks and in favor of moneyed capital employed in the State of Mississippi in competition with the business of national banks.

And now having fully answered, this defendant denies that any such taxes as are sued for, were or are due either by the shareholders of the First National Bank of Meridian, or by the First National Bank of Meridian, or by the Receiver of First National Bank of Meridian, and shows that the assessment and levy of such taxes herein sought to be enforced were wholly null and void and defendant states that it is not, and never has been, liable to pay the said taxes or any part thereof.

MOTION TO DISMISS

And now having fully answered, the defendant moves to dismiss the bill of complaint and for grounds, states the following:

1. It affirmatively appears on the face of the bill of complaint that the alleged assessment for taxes, alleged therein [fol. 85] to have been made upon page 12 of the Personal Assessment Roll of Lauderdale County, State of Mississippi, for the year 1930, was and purports to be, an assess-

ment made directly against First National Bank of Meridian and not against the stockholders thereof; and that such assessment is null and void on the face thereof, because it violates Section 5219 of the Revised Statutes of the United States and the amendments thereto, with reference to the assessment of the shares of stock of national banks.

2. It affirmatively appears on the face of the bill of complaint that the alleged assessment for the year 1930, alleged to have been made by the City of Meridian against First National Bank of Meridian was, and is, a direct assessment against First National Bank of Meridian and not against the shareholders thereof; and was, and is, null and void, because in violation of the provisions of Section 5219 of the Revised Statutes of the United States and the amendments thereto.

3. It affirmatively appears that the taxes sought to be recovered in this cause were originally assessed and levied by the state, county and municipality, not against the shareholders of First National Bank of Meridian, but as against First National Bank of Meridian; and that such taxes were levied upon the First National Bank of Meridian direct, measuring them by the alleged value of its shares of capital stock, surplus and undivided profits, and such assessment and levy of such taxes are, on the face thereof, null and void under the provisions of Section 5219 of the Revised Statutes of the United States as construed by the Supreme Court of the United States in the case of First National Bank of Gulfport, Mississippi, v. Adams, State Tax Collector, 258 U. S. 361, 66 L. Ed. 661.

[fol. 86] 4. It affirmatively appears on the face of the bill of complaint, that the taxes levied and assessed against First National Bank of Meridian, and here sought to be collected of this defendant, were void because in contravention of the Statutes of the United States.

5. It affirmatively appears that recovery of such void taxes from and of the defendant, First National Bank in Meridian, is predicated, not upon any assessment and levy of such taxes as against the defendant, First National Bank in Meridian, but upon the theory that said taxes, though

not assessed against the shareholders of First National Bank of Meridian, were, nevertheless, a debt of the shareholders of First National Bank of Meridian, which First National Bank of Meridian ought to have paid prior to the receivership; and that defendant, First National Bank in Meridian, in and by its purchase of the assets of First National Bank of Meridian from the Receiver of such bank, with the written consent of the Comptrol-er of the Currency, and pursuant to an order of the United States District Court for the Eastern Division of the Southern District of the State of Mississippi, assumed the payment of such taxes. But the contract between the defendant bank and the said Receiver of First National Bank of Meridian, Exhibit "F" to the original bill of complaint, rightly understood and construed, clearly and affirmatively shows that the defendant bank did not assume payment of sush obligation, for the following reasons:

a. Said liability did not exist as against First National Bank of Meridian.

b. It affirmatively appears that the Receiver of First National Bank of Meridian was not, at the time of the making of the contract with defendant, First National Bank in Meridian, liable for said taxes or any part thereof.

[fol. 87] c. It affirmatively appears that the claim for said taxes was not a recognized liability of either First National Bank of Meridian or the Receiver thereof, at the time this defendant bank purchased the assets from the Receiver of First National Bank of Meridian; and it, also, affirmatively appears that it was not a claim or liability established during the active receivership of First National Bank of Meridian.

d. It affirmatively appears on the face of the bill of complaint that the taxes for which this suit was brought were not assumed in and by the purchase of said assets by First National Bank in Meridian, the defendant herein.

e. It affirmatively appears from the said contract, Exhibit "F" to the bill of complaint, that this defendant did not assume liability of such taxes.

f. It does not appear that the taxes sued for constituted such a claim as the Receiver, under the contract, Exhibit

"F", had a right to call upon this defendant bank to furnish funds to pay.

g. It affirmatively appears that plaintiff was not a party to such contract and that it was not made for his benefit.

6. It affirmatively appears that there is no liability upon the defendant bank arising under the contract, Exhibit "H" to the original bill of complaint, for the reasons:

a. That said alleged liability is not covered by the contract, Exhibit "H."

b. The alleged liability is not assumed by the contract, Exhibit "H."

[fol. 88] v. The contract, Exhibit "H," is, at most only a contract of indemnity and not such a contract as can be sued on directly by the complainant.

d. The plaintiff is not a party to such contract and it was not made for his benefit.

7. There is no right of recovery shown in the bill of complaint.

Respectfully submitted, Bozeman & Cameron, Wilbourn, Miller & Wilbourn, Attorneys for Defendant.

Duly sworn to by W. D. Cook. Jurat omitted in printing.

[fol. 89] IN UNITED STATES DISTRICT COURT

MOTION FOR LEAVE TO AMEND BILL OF COMPLAINT—Filed March 20, 1934

And now comes James B. Gully, State Tax Collector, complainant in the above captioned cause, by his attorneys, and files herewith his motion to be allowed to amend the original bill filed herein by making as additional party defendants thereto the following named parties, to-wit: First National Bank of Meridian, Louis G. Selig, Receiver of said First National Bank of Meridian, J. G. Repsher, Marshall Loeb, and W. W. Willis, and by adding other averments to the original bill as shown by the proposed amendment exhibited herewith to the Court.

The Complainant would show that he is advised and believes that said amendment is material to this cause and is necessary in order to get all proper and necessary parties before the Court in order that the Court can do full and complete justice between the parties in rendering a final decree herein.

Wherefore, Premises Considered, the complainant makes this his motion to be allowed to make the amendment to the bill of complaint as above indicated.

Respectfully submitted, Marshall W. Amis, J. C. Floyd, Special Attorneys for James B. Gully, State Tax Collector.

[fol. 90] IN UNITED STATES DISTRICT COURT

AMENDMENT TO BILL OF COMPLAINT

Now comes the complainant, James B. Gully, State Tax Collector, by his attorneys, and by leave of Court first had and obtained, files this his amendment to the original bill of complaint in this cause, to-wit:

A. Complainant names as additional defendants to said bill of complaint the following parties, to-wit: First National Bank of Meridian, Louis G. Selig, Receiver of said First National Bank of Meridian, J. G. Repsher, Marshall Loeb, and W. W. Willis.

B. Complainant charges that the defendant, First National Bank of Meridian, is a national banking association organized and existing under the laws of the United States of America and domiciled in the City of Meridian, Lauderdale County, Mississippi.

C. Complainant charges that the defendant, Louis G. Selig, is the duly appointed, qualified and acting receiver of said First National Bank of Meridian under appointment by the Comptroller of the Currency of the United States.

D. Complainant charges that the defendants, J. G. Repsher, Marshall Loeb and W. W. Willis, are each and all resident citizens of the City of Meridian, Lauderdale County, Mississippi.

E. Complainant reiterates and re-affirms all of the allegations as set forth in paragraphs numbered from 1 to 42, both inclusive, of his original bill of complaint the same as [fol. 91] if fully re-copied here, and, adding further paragraphs to be numbered from 43 to 44 inclusive, charges and says:

43rd. That pursuant to the provisions of the contract for the sale of the assets of the First National Bank of Meridian, Exhibit "F" to the original, and the provisions of the creditors agreements referred to in said contract, Exhibit "F," the defendant First National Bank in Meridian did in due course set aside, convey and deliver unto the defendants J. G. Repsher, Marshall Loeb and W. W. Willis as Trustees, certain of the assets of said First National Bank of Meridian of the par or book value of approximately $1,250,000.00 to be held, collected, liquidated and administered by said Trustees for the benefit first of the creditors of said First National Bank of Meridian, and second of the shareholders of said First National Bank of Meridian, as set forth in said contract, Exhibit "F."

44th. That said Trustees have not fully administered said trust but are still engaged therein and have certain of said assets, the exact amount and nature of which are unknown to your complainant, still in their possession, and that the interest of the shareholders of said First National Bank of Meridian in said assets is liable in the hands of said Trustees to the payment of the taxes hereinbefore set forth.

Premises Considered, your complainant prays that the said First National Bank in Meridian, First National Bank of Meridian, Louis G. Selig, Receiver of the First National Bank of Meridian, J. G. Repsher, Marshall Loeb and W. W. Willis be made parties defendant to this bill of complaint and required to plead, answer or demur thereto, and that upon a final hearing hereof a personal decree may be entered in favor of your complainant and against said First [fol. 92] National Bank in Meridian, First National Bank of Meridian, and Louis G. Selig, Receiver of the First National Bank of Meridian, for all of the taxes aforesaid, to-wit: Four Thousand Three Hundred Twenty-one and 08/100 Dollars for the use and benefit of the State of Mis-

sissippi; Eight Thousand Six Hundred Forty-two and 16/100 Dollars for the use and benefit of the County of Lauderdale in said State of Mississippi; Eight Thousand Six Hundred Forty-two and 16/100 Dollars for the use and benefit of the County of Lauderdale in said State of Mississippi; Eight Thousand One Hundred Two and 85/100 Dollars for the use and benefit of the City of Meridian in said State; and Five Thousand Four Hundred One and 90/100 Dollars for the use and benefit of the Meridian Separate School District in Lauderdale County, in said State, all with interest thereon at the rate of Six per centum per annum from the 1st day of December, A. D. 1930, until paid, and all costs of this proceeding; and that all the right, title and interest of the shareholders of the First National Bank of Meridian in the assets of said First National Bank of Meridian now held by J. G. Repsher, Marshall Loeb and W. W. Willis as Trustees be condemned to the payment of said judgment, and that said Trustees be required to account to this Court therefor.

Or if mistaken in the relief prayed for, then for such other, further and different relief as to the Court may seem meet and proper in the premises.

And as in duty bound complainant will ever pray, etc.

M. W. Amis, J. C. Floyd, Special Attorneys for James B. Gully, State Tax Collector.

[fol. 93] *Duly sworn to by J. D. Ready. Jurat omitted in printing.*

IN UNITED STATES DISTRICT COURT

OBJECTIONS TO ALLOWANCE OF PROPOSED AMENDMENT TO BILL —Filed March 19, 1934

And now comes First National Bank in Meridian and files this its objection to the allowance of a proposed amendment to the original bill which the plaintiff applied on February 19, 1934, for leave to file, and for grounds states the following:

1. The proposed amendment, which in form is a request for leave to amend after answer filed by defendant to the original bill, is, in reality, in its true nature and substance,

an application for leave to file a supplemental bill, and govern by Equity Rule No. 34.

Such proposed supplemental bill does not set up any new matters that have occurred since the filing of the original bill, nor any matters of which it is claimed or shown that [fol. 94] plaintiff was ignorant at the time of the filing of the original bill.

2. It affirmatively appears that First National Bank of Meridian, now sought to be made a party defendant to such suit, closed its doors January 13, 1931, by reason of insolvency, more than three years prior to the filing of application for leave to make it a party to this suit; that it has been out of business for more than three years prior to February 19, 1934, and is now no longer an existing national banking organization; that a Receiver thereof was appointed, administered the estate, disposed of all the assets, and that such receivership was finally closed July 15, 1932, in consequence of which said bank does not longer exist and has no assets upon which any judgment against it could operate, so that said First National Bank of Meridian is now no longer suable.

3. It affirmatively appears from the allegations of the original bill and the answer of the defendant thereto, that said First National Bank of Meridian is neither a necessary nor proper party to the suit between plaintiff and this defendant, and that to make it a party would constitute a misjoinder of parties defendant.

4. It affirmatively appears on the face of the original bill that the alleged assessments against First National Bank of Meridian were then and there null and void, and in violation of the laws of the State of Mississippi and of the United States.

5. It affirmatively appears from the original bill of complaint that there is and was no cause of action in favor of plaintiff against First National Bank of Meridian.

[fol. 95] As to Louis G. Selig:

6. It affirmatively appears from the original bill and answer thereto, that the Receivership of First National Bank of Meridian was finally closed July 15, 1932; and it is not true that Louis G. Selig is the duly appointed, quali-

fied and acting receiver of First National Bank of Meridian; that said Selig is not even in the employ of the Comptroller of the Currency as any sort of receiver; that he is a resident of New Orleans, Louisiana, and is not residing in or suable in the Southern District of Mississippi.

7. The said Louis G. Selig is neither a necessary nor proper party to this suit, and to make him a party would constitute a misjoinder of parties defendant.

As to W. W. Willis, J. G. Repsher and A. M. Loeb:

8. The said W. W. Willis, J. G. Repsher and A. M. Loeb, Trustees, are neither necessary nor proper parties to this suit, and their joinder would constitute a misjoinder of parties defendant.

9. It affirmatively appears from the original bill that there is no judgment that could be rendered against the said trustees in this case in favor of plaintiff, and that plaintiff has no cause of action against said Trustees, since it is manifest on the face of plaintiff's own pleadings and exhibits that said W. W. Willis, J. G. Repsher and A. M. Loeb, are not trustees for plaintiff or defendant, have no assets on which plaintiff has any lien whatever, owe plaintiff nothing, not even the duty to account to him, and plaintiff neither has nor could obtain any judgment condemning any assets in their hands to pay any amount to him, since (a) the plaintiff has no right against the claim of the creditors for whom such parties are trustees, since (b) no such right [fol. 96] is claimed in the suit nor the proposed amendment (c) there has never been any assessment at all of the tax claimed against any of the shareholders, and indeed no valid assessment of any tax at all; and (d) since none of the parties for whom alone the said parties are trustees are before the Court.

10. The allowance of such supplemental pleading would be to permit an entire departure in pleading, would in effect be an entirely new suit, would not aid nor further the determination of the only issues raised or that could be raised between plaintiff and this defendant, and would not be in furtherance of justice.

Respectfully submitted, Bozeman & Cameron, Wilbourn, Miller & Wilbourn for Defendant First National Bank in Meridian.

STATE OF MISSISSIPPI,
County of Lauderdale:

Personally appeared before me the undersigned authority in and for the above county and state, Stella Elson who on oath states that during the period of the receivership of First National Bank of Meridian she was an assistant or clerk to the original receiver, C. P. Rogers, and to his successor, Louis G. Selig, and that by virtue of her connection with the matter as such assistance or clerk to such receivers, she personally knows that the receivership of the First National Bank of Meridian was finally closed as of July 15, 1932.

Affiant further states that she personally knows that no receivership of said bank is now pending; that no one is acting as the receiver of said bank and that Louis G. Selig is not now an acting receiver of said bank; that he is not in the employ of the Comptroller of the Currency or of the [fol. 97] Treasury Department, but on the contrary now resides in New Orleans, Louisiana, and is in the employ of The Federal Land Bank of New Orleans.

Stella A. Elson.

Sworn to and subscribed before me by Stella Elson on this the 24th day of February, A. D. 1934. Henry J. Meyer, Notary Public. My Commission Expires Sept. 11, 1937. (Seal.)

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING MOTION FOR LEAVE TO AMEND BILL OF COMPLAINT

This cause coming on for hearing on motion of the plaintiff for leave to amend the original bill filed in this cause by making parties to this cause The First National Bank of Meridian, Louis G. Selig as Receiver of First National Bank of Meridian, and J. G. Repsher, W. W. Willis and A. M. Loeb, Trustees;

And the Court having heard and considered said motion and the argument of counsel thereon, doth hereby order and decree that said motion be and it is hereby denied.

To the ruling of the Court, counsel for plaintiff then and there in open Court duly excepted and such exception is herewith allowed by the Court.

Done in open Court on this the 20th day of March, A. D. 1934.

Allen Cox, Judge.

[fol. 98] IN UNITED STATES DISTRICT COURT

MOTION FOR SETTING OF CAUSE, ETC.—Filed March 20, 1934

And now comes the complainant herein, J. B. Gully, State Tax Collector, by his attorneys, and files herewith his motion for a setting of the above captioned case in preference to other civil causes pending in this Court between private parties in accordance with Section 768, Title 28, U. S. C. A. (Revised Statutes, 949), and attaches hereto in support of said motion an affidavit which sets forth the causes or reasons assigned for such preference setting.

Respectfully submitted, Marshall W. Amis, J. C. Floyd, Attorneys for State Tax Collector.

AFFIDAVIT OF J. D. READY

STATE OF MISSISSIPPI,
Lauderdale County:

Personally appeared before me the undersigned authority, in and for the above named County and State, J. D. Ready, Deputy State Tax Collector, who, after by me first being duly sworn, on oath, says that:

1. The cause of J. B. Gully, State Tax Collector v. First National Bank in Meridian, Mississippi, now pending in this Court is a suit for certain ad valorem taxes due the City of Meridian, Meridian Separate School District, Lauderdale County, and State of Mississippi for the year 1930, which [fol. 99] said taxes have been due since December 1, 1930, and delinquent since February 1, 1931.

2. The City of Meridian, subsequently to the delinquent date of said taxes, sold certain tax redemption certificates which will mature on or about April 1, 1934, and said City

of Meridian needs the money due it, as set forth in this suit, to take care of these and other obligations.

3. The County of Lauderdale has certain indebtednesses maturing in the near future, including bonds, warrants, and other certificates of indebtedness, and it needs the amount of money due it, as set forth in this suit, for the purpose of meeting said obligations.

4. On a trial of this cause, it will be necessary to use certain witnesses who were connected with the First National Bank of Meridian and certain records of said bank and said bank is no longer actively engaged in business, and as time passes it will be more difficult to obtain the attendance of said witnesses and obtain said records.

5. If this said cause were required to take its regular place on the docket of this Court and await its turn for a hearing, it probably could not be heard for several years, and it, therefore, would work a great detriment to the State of Mississippi and the other parties to said cause.

6. Affiant would show that the same method of assessment for taxation was used by the tax assessors in the assessments which are involved in this suit as is now used in practically all the counties and municipalities of the state insofar as the assessment for taxes of national banks is concerned, and the defendant, the First National Bank in [fol. 100] Meridian, in this cause has challenged the constitutionality and validity under the constitution and laws of the United States of said taxes and of said method of assessment, and further there is now pending other suits in the State of Mississippi where the same question as to validity and constitutionality of assessment for taxes against national banks is raised, and by reason thereof, it is of vital importance to the State of Mississippi and its political subdivisions that said question concerning its method of assessment and taxation of national banks in the execution of its revenue laws be immediately determined.

7. The power of the State of Mississippi to tax the property involved in the assessment for taxes herein sued on and property of similar kind and character owned by national banks is challenged in the answer of the defendant herein, and by reason thereof a decision of this suit will materially affect the enforcement and execution of the reve-

nue laws of the State of Mississippi and the political subdivisions thereof, and by reason thereof, it is of vital importance that this cause be disposed of at the earliest possible date.

J. D. Ready, Deputy State Tax Collector.

Sworn to and subscribed before me, this the 20 day of March, 1934. J. C. Covert, Jr., Notary Public. (Seal.)

IN UNITED STATES DISTRICT COURT

MOTION FOR LEAVE TO AMEND ORIGINAL BILL—Filed November 1, 1934

And now comes James B. Gully, State Tax Collector, by his attorneys, and respectfully moves the Court for author-
[fol. 101] ity to amend the original bill in this cause in the following particulars:

By substituting the following amended paragraph 7 of said bill for paragraph 7 included in the original bill, to wit:

"7th. That during the year 1930 the shareholders of the First National Bank of Meridian were subject to taxation by the State of Mississippi, by the County of Lauderdale, by the City of Meridian, and by the Meridian Separate School District upon the capital stock, surplus, and undivided profits of said bank in the manner provided by the laws of the State of Mississippi and the charter and ordinances of the City of Meridian and the laws of the United States, and the said bank was by law required to make a proper return for assessment of and to pay said taxes as agent of its said shareholders as provided by law."

By substituting the following amended paragraph 8 of said original bill for paragraph 8 of said original bill as filed, to wit:

"8th. That during the year 1930, pursuant to its said duty, said bank undertook to make return for assessment of said tax, as required by the laws of the State of Mississippi and of the United States, and the said First Na-

tional Bank of Meridian, acting through its proper officers, did make a return to the Tax Assessor or Lauderdale County, Mississippi, for the purpose of an assessment of the capital stock, surplus, and undivided profits of said bank. That said return so made by said bank was used by the said Tax Assessor of Lauderdale County, Mississippi, in making said assessment of said capital stock, surplus, and undivided profits in exact accordance with said return as made by said bank; and said assessment for state and county taxes for the year 1930 so returned by [fol. 102] said bank was by said Assessor copied upon page 12 of the Personal Assessment Roll of Lauderdale County for the year 1930, in words and figures as follows, to wit:

Name—Bank, First

Banks capital stock, surplus and undivided profits less book value of real estate.....	$540,135.00
Total valuation of all personal property...	540,135.00"

By substituting for the twenty-first paragraph of said original bill as filed, the following amended paragraph twenty-one:

"21st. That during the year 1930, pursuant to its said duty, said First National Bank of Meridian, undertook to make return for assessment for taxes due the City of Meridian, as required by the charter, charter amendments, and ordinances of the City of Meridian, the laws of the State of Mississippi and of the United States, and the said First National Bank of Meridian, acting through its proper officers, did make a return to the Tax Assessor of the City of Meridian, Mississippi, for the purpose of an assessment of the capital stock, surplus, and undivided profits of said bank. That said return so made by said bank was used by the said Tax Assessor of the City of Meridian in making said assessment of said capital stock, surplus, and undivided profits in exact accordance with said return as made by said bank, and said assessment for City of Meridian and Meridian Separate School District taxes for the year 1930 so returned by said bank was by said City Tax Assessor copied upon page — upon the

Personal Assessment Roll of the City of Meridian for the year 1930, in words and figures as follows, to wit:

'First National Bank

2600 shares capital stock	$260,000.00
Surplus and Undivided Profits	313,890.00
	$573,890.00
[fol. 103] Less Real Estate	33,700.00
	$540,190.00
Total value of all Personal Property	$540,190.00
Total Tax on Same	$13,504.75'''

By adding to said original bill as an amendment or supplement thereto the following as paragraph forty-three:

"43rd. That for many years prior to the year *year* 1930, the said First National Bank of Meridian had been required by the laws of the State of Mississippi and of the United States to make returns for assessment of its capital stock, surplus, and undivided profits and to make payment of the taxes due thereon as agent of its shareholders; that pursuant to such duty it had for many years prior to the year 1930 made to the Tax Assessor of Lauderdale County and to the Tax Assessor of the City of Meridian its returns for assessment of its capital stock, surplus, and undivided profits in the same manner and form as it did for the year 1930, and that pursuant to such returns theretofore made by it the Assessor of Lauderdale County, Mississippi, and the Assessor of the City of Meridian made the assessments against the capital stock, surplus, and undivided profits of said bank in the same manner and form and to the same effect as was done for the year 1930, and that during all said years the said bank as agent of its shareholders had paid said taxes for and on behalf of its shareholders. And the complainant now charges that since by law the said bank as agent of its shareholders was required to make proper returns of its capital stock, surplus, and undivided profits to the Assessor of Lauderdale

County, Mississippi, and to the Assessor of the City of Meridian, for assessment, and since during many years preceding the year 1930 it had made returns in the same form and substance as the returns made by it for the year [fol. 104] 1930 and had pursuant thereto, as agent for its several shareholders, paid the taxes so assessed, it is now estopped to say that the said assessments are not legal, valid, and binding against it and its said several shareholders. And complainant further says and charges that since the First National Bank of Meridian was at the time of its failure estopped to deny the legal validity of said assessments by reason of the matters and things hereinbefore stated, and since the defendant, the First National Bank in Meridian, has heretofore by its valid and legal contract with the Receiver of the said First National Bank of Meridian, Exhibit "F" hereto, assumed and agreed to pay all the liabilities of the said First National Bank of Meridian, and since the First National Bank in Meridian has by its valid and legal contracts with the shareholders of the First National Bank of Meridian, Exhibits "H" and "I" hereto, agreed to relieve said shareholders of all statutory liability imposed upon them as shareholders in the First National Bank of Meridian, that the said First National Bank in Meridian is now estopped to question the validity of the said assessments in the same way and to the same extent as the First National Bank of Meridian, or its shareholders, was at the time of its failure on the 13th day of January, 1931."

Complainant would show that said amendments are necessary in his opinion in order that complete justice may be done between the parties, and in order that said bill may accurately present to the Court the facts upon which the complainant believes he is entitled to the relief sought in said original bill.

That said amendments have been made necessary because of certain errors, omissions or inaccuracies which were inadvertently made in the original bill and which have been brought to the attention of counsel for the complainant since the original bill was filed.

[fol. 105] Complainant would further show that said motion for amendment is not made for the purpose of delay, but the complainant and his counsel are of the opinion that

said amendments should be allowed in the furtherance of justice.

Respectfully submitted, J. C. Floyd, Counsel for Complainant.

Duly sworn to by J. D. Ready. Jurat omitted in printing.

IN UNITED STATES DISTRICT COURT

OBJECTIONS OF DEFENDANT, FIRST NATIONAL BANK IN MERIDIAN, TO THE ALLOWANCE BY THE COURT OF THE AMENDMENTS TO THE BILL OF COMPLAINT SET OUT IN PLAINTIFF'S MOTION TO AMEND THE ORIGINAL BILL OF COMPLAINT—Filed March 18, 1935

And now comes First National Bank in Meridian and files this its objection to the allowance of the various [fol. 106] amendments set forth in a motion of the plaintiff filed on the — day of October, 1934, copy of which was served on attorneys for defendant on the 30th day of October, 1934, and for grounds of such objection state the following:

The bill of complaint in this case was originally filed on the 1st day of August, 1933, in the Chancery Court of Lauderdale County, Mississippi, and was thereupon removed to the District Court of the United States for the Eastern Division of the Southern District of Mississippi.

The motion to remand the case to the State Court was made in the District Court of the United States for the Eastern Division of the Southern District of Mississippi and was overruled by such Court on the 23rd day of October, 1933.

Thereafter, on the 27th day of October, 1933, the defendant, First National Bank in Meridian filed its answer and its motion to dismiss the bill of complaint, which motion to dismiss is incorporated in the said answer.

The motion to dismiss the bill of complaint was heard and argued at the regular September Term 1934 of the District Court of the United States for the Eastern Division of the Southern District of Mississippi, and the Court announced orally the Court's conclusion that the motion to dismiss should be sustained.

Thereupon in open Court, counsel for plaintiff requested the Court to take the cause under advisement for thirty days before entering any decree on the motion to dismiss, in order to enable plaintiff's counsel to determine whether or not they desired to ask any leave to amend the bill of complaint or whether or not they would decline [fol. 107] to amend and suffer a decree final to be entered and prosecute an appeal.

At the instance of counsel for plaintiff, the Court entered an order taking the case under advisement which said decree is worded as follows:

"It is hereby ordered that the above captioned case be and it is hereby taken under advisement for a decree to be rendered within thirty days on the motion to dismiss filed by the defendant.

"So Ordered, Adjudged And Decreed, this the 28th day of September, 1934."

Subsequently, a decree extending the time for entry of decree on the motion to dismiss was entered reading as follows:

"It is hereby ordered by the Court, on the agreement of the parties that in this cause, which was taken under advisement at regular September Term 1934, decree may be rendered on or before November 3rd, A. D. 1934."

Thereupon and on the 30th day of October, 1934, plaintiff served copy of motion to amend the bill of complaint on counsel for the defendant, to the granting of which the defendant interposes the following specific objections:

1. The proposed amendments come too late and no valid excuse is offered in the motion for the failure to make the averments now sought to be made, in the original bill.

2. It is not shown that the matters and things now sought to be averred were unknown to or might not have been known to the plaintiff at the time of the filing of the bill [fol. 108] of complaint. And, it is not sufficiently made known to the Court that the plaintiff was ignorant of them when the bill of complaint was filed.

3. It does not appear that any of the averments now sought to be introduced into the bill relate to facts occurring after the filing of the original bill, nor to facts of which the plaintiff was ignorant when the original bill was filed.

4. The purport of the proposed amendments is an effort to show that the Old First National Bank of Meridian was estopped to say that the assessments were not legal, valid and binding against it and its several shareholders and that this defendant is, also, estopped by virtue of the contracts, Exhibit- F, H and I to the original bill of complaint. But defendant shows that the averments of the proposed amendments upon which such contention of the plaintiff is predicated are insufficient in law to establish any estoppel whatever.

5. The proposed amendments are statements of the conclusions of the pleader not borne out by any facts averred therein, nor in the original bill of complaint, and not sustained but contradicted by the exhibits presented with the original bill of complaint.

6. The amendments fail to show that the First National Bank of Meridian in any way prevented either the assessor of the City of Meridian or the assessor of the County of Lauderdale, Mississippi, from making legal and valid assessments upon the returns and information furnished by said bank and failed to show any facts which now estop this defendant to say and contend that the assessments in question are illegal and invalid.

[fol. 109] 7. It would be futile to grant the plaintiff's motion and to allow the proposed amendments to the bill of complaint, because of the fact that if the said amendments to the bill be made, still the bill as amended would state no cause of action against this defendant, and would still be subject to the same objections as were made to the original bill in this defendant's motion to dismiss the same.

And by way of further response to the motion of plaintiff for leave to amend this defendant says that it denies that it is necessary, in order that complete justice may be done between the parties, that said amendment should be allowed because the defendant says that the amendments, if allowed would not change the legal effect

of the bill, and the bill as amended would not state any cause of action against this defendant.

Wherefore, defendant prays the Court to disallow the proposed amendment.

Respectfully submitted, Bozeman & Cameron, Wilbourn, Miller & Wilbourn, Attorneys for Defendant.

Duly sworn to by W. B. Chipman. Jurat omitted in printing.

[fol. 110] IN UNITED STATES DISTRICT COURT

MOTION OF COMPLAINANT FOR SEPARATE CONCLUSIONS OF LAW AND/OR OPINION—Filed Nov. 1, 1934

And now comes the complainant herein, by his counsel, and moves the Court to set forth separately from the decree rendered herein its conclusions of law and/or written opinion, as provided by Equity Rule 70½.

Respectfully submitted, J. C. Floyd, Counsel for Complainant.

AGREEMENT

It is agreed by counsel for complainant and defendant, and the record may so show, that when the District Court announced orally that the motion to dismiss would be sustained, counsel for complainant called to the Court's attention the motion theretofore filed for separate conclusions of law and thereupon the District Judge directed counsel for defendant in preparing the final decree to include such conclusions of law therein.

[fol. 111] "That thereafter counsel for defendant prepared the final decree, submitted it to counsel for complainant, and to the District Judge and the District Judge signed the same in the presence of counsel for complainant and defendant and counsel for complainant made no objection to the form of the decree and no further motion for additional conclusions of law."

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI

No. 122

JAMES B. GULLY, State Tax Collector, Plaintiff,

vs.

FIRST NATIONAL BANK OF MERIDIAN, Defendant

FINAL DECREE—March 27, 1935

This cause came on to be heard at the September Term, A. D. 1934, of this Court, on the original bill and the motion of the defendant to dismiss same, and the Court heard and considered same and the argument of counsel, and, being fully advised in the premises, found and herein states the following conclusions of law, to-wit:

That the assessment of the capital stock, surplus and undivided profits of First National Bank of Meridian, less book value of real estate, at the sum of $540,135.00, for the State and County Taxes for the year 1930, to the bank itself, as set forth in the 8th paragraph of the original bill, and the assessment of

[fol. 112]

2600 shares Capital stock	$260,000.00
Surplus and Undivided Profits	313,890.00
	$573,890.00
Less Real Estate	33,700.00
Total value of all Personal Property	$540,190.00

for taxes due the City of Meridian and the Meridian Separate School District, for the year 1930, direct to First National Bank of Meridian, as set forth in the 21st paragraph of the bill of complaint, were not and are not equivalent to a tax against the shareholders in respect of their shares, and that such assessments against said bank were and are beyond the power of the taxing authorities of the said State, County and Municipality, and Separate School District, contrary to the applicable provisions of the ap-

plicable laws of the United States and of the State of Mississippi, and wholly void and unenforceable; that the original bill does not allege the existence of any facst that did or would estop said bank and the receiver thereof to claim the invalidity of such assessments; that the taxes levied pursuant to such assessments, not having been paid at the time the First National Bank of Meridian became insolvent and a receiver thereof was appointed, were not a lien upon the assets of the bank in the hands of such receiver; that the bill does not aver any state of facts showing that the defendant, First National Bank in Meridian, which purchased such assets of such receiver of First National Bank of Meridian, was either estopped to claim the invalidity of such assessments or was liable to plaintiff for such taxes; that the bill of complaint stated no cause of action against the defendant, First National Bank in Meridian, and ought to be dismissed.

Thereupon the plaintiff asked the Court to defer entry of decree dismisisng the bill of complaint and to take said [fol. 113] cause under advisement for thirty days, to allow plaintiff time to determine whether or not plaintiff would decline to plead further or seek to amend the bill, and the Court, at the September Term 1934, simply entered a decree taking the cause under advisement for entry of decree in vacation.

Thereupon plaintiff filed a motion for leave to amend the bill of complaint, to which defendant filed written objections, and the matter not having been heard in vacation, the cause came on again to be heard at this, the March Term 1935, of this Court on plaintiff's motion to amend the bill and defendant's objections thereto, and the Court again heard and considered the argument of Counsel thereon, and now finds and states, as conclusions of law, that the proposed amendments, if allowed, neither change in any material way the legal effect of the original bill, nor cure the defects therein; that considering the bill as amended by the proposed amendments, the Court is of the opinion, that the assessments relied on are not the equivalent of a tax on the shareholders, are wholly void, contrary to the laws of the United States and of the State of Mississippi, beyond the power of such taxing authorities and unenforceable; that the taxes sued for, based on such assessments, were not a lien on the assets of the First Na-

tional Bank of Meridian in the hands of the receiver thereof; that neither said bank nor its receiver were estopped to assert the invalidity of such assessments and tax levies; that the proposed amendments do not show that the defendant bank is estopped in any way to assert the invalidity of the assessment and levy of the taxes sued for; that the bill, if amended as prayed, would state no cause of action against defendant; and that the doing of complete justice does not require the allowance of such amendments.
[fol. 114] It is, therefore, ordered, adjudged and decreed by the Court as follows:

1. That the said motion for leave to amend the bill of complaint filed herein on November 2, 1934, be and the same is hereby over-ruled.

2. And, plaintiff asking no further leave to amend, but declining to plead further, that defendant's motion to dismiss be and the same is hereby sustained, and the bill of complaint be and it is hereby dismissed.

To the aforesaid ruling and decree of the Court, the plaintiff in open Court then and there excepted, and said exception is hereby allowed, and it is ordered that the proposed amendment and defendant's written objections thereto be made a part of the record, on any appeal from this decree.

Ordered, adjudged and decreed this the 27th day of March, A. D. 1935.

Allen Cox, Judge.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed April 6, 1935

To the Hon. Allen Cox, United States District Judge:

The complainant, James B. Gully, State Tax Collector, suing for the use and benefit of the City of Meridian, County of Lauderdale, and State of Mississippi, feeling himself aggrieved by the decree made and entered in this cause on the 27th day of March, 1935, hereby prays an appeal from said decree to the Circuit Court of Appeals of [fol. 115] the Fifth Circuit, for the reasons specified in the

assignment of errors which is filed herewith, and he prays that his appeal be allowed and that citation issue as provided by law and that a transcript of the record, proceedings, and papers upon which said decree was based, duly authenticated, may be sent to the United States Fifth Circuit Court of Appeals, sitting at New Orleans, Louisiana.

And your petitioner further prays that proper order touching the security required of him to perfect his appeal be made.

J. C. Floyd, Of Counsel for Complainant.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed April 6, 1935

And now comes the complainant in the above captioned cause and says that the decree of the United States District Court for the Eastern Division of the Southern District of Mississippi, entered on March 27, 1935, in the above captioned cause is erroneous and contains errors greatly to the prejudice of the complainant, plaintiff in error and he assigns as such error the following, to wit:

1. The District Court erred in overruling by its decree of October 21, 1933 the motion of complainant filed on October 16, 1933 to remand this cause to the State Court, in that said cause was improperly removed to the United States District Court and said Court was without jurisdiction to hear and determine said cause.

2. The District Court erred in overruling by its decree of March 20, 1934 the complainant's motion filed on March [fol. 116] 20, 1934 to amend its original bill in the particulars set forth in said motion.

3. The District Court erred in overruling by its decree of March 27, 1935 the motion of complainant filed on November 1, 1934 to be allowed to amend its original bill in the particulars set out in said motion.

4. The District Court erred in sustaining by decree of March 27, 1935 the motion of the defendant filed October 27, 1933 to dismiss the original bill.

5. The District Court erred in not setting forth fully, as required by Equity Rule 70½, and as prayed for in complainant's motion filed November 1, 1934, separately from the final decree rendered herein its conclusions of law and/or written opinion on each of the points raised by the defendant in its motion to dismiss, which motion was sustained.

6. The District Court erred in dismissing the original bill of complaint.

7. And for other errors apparent.

J. C. Floyd, Of Counsel for Complainant, Plaintiff in Error.

We, the undersigned solicitors for the defendant in the above captioned cause, hereby acknowledge receipt of a copy and service of the above and foregoing assignment of error.

This the 6th day of April, 1935.

Bozeman & Cameron, Wilbourn, Miller & Wilbourn, by R. E. Wilbourn, Attorneys for Defendant.

[fol. 117] In United States District Court

Order Allowing Appeal and Fixing Bond—Filed April 6, 1935

This cause coming on this day to be heard on the petition for an appeal filed by the complainant herein, and the Court after having heard and considered said petition, does hereby order and adjudge that said petition for an appeal be and it is hereby granted, and that said appeal be allowed upon the defendant giving a bond conditioned as required by law in the sum of Five Hundred Dollars ($500.00), said bond to be approved by this Court.

So ordered, adjudged, and decreed, this the 8th day of April, 1935.

Allen Cox, District Judge.

Bond on appeal for $500.00, approved and filed April 6, 1935, omitted in printing.

[fol. 118] IN UNITED STATES DISTRICT COURT

AGREEMENT AS TO RECORD

It Is Agreed by and between counsel for the complainant, plaintiff in error, and counsel for defendant, defendant [fol. 119] in error, for the purpose of condensing and shortening the record on appeal, that the following may be inserted in the form indicated:

1. Caption and organization of Court.
2. Agreed record.

(a) Insert original bill of complaint prefaced with the following statement:

"This cause was originally instituted in the Chancery Court of Lauderdale County, Mississippi by bill of complaint filed on August 1, 1933 in words and figures as follows, to wit:"

(b) Insert exhibits to original bill.

(c) Omit summons and use the following statement:

"Summons was duly issued and served, returnable to the rules day of said Court to be held on the second Monday of August, 1933." Within the time allowed by the State Law to plead to such suit, defendant filed petition to remove.

(d) Insert removal proceedings.

(e) Insert after inclusion of removal proceedings, the following statement:

"The transcript from the Lauderdale County Chancery Court was filed in the District Court within the time required by law, to wit, on September 30, 1933."

[fol. 120] (f) Omit State Court cost bill and insert the following statement:

"The defendant filed in the District Court cost bill from the Chancery Court of Lauderdale County, Mississippi, showing cost paid by it in the sum of $27.65."

(g) Insert notice of motion to remand.

(h) Insert motion to remand.

(i) Insert order overruling motion to remand.
(j) Insert the following statement:

"The defendant on October 27, 1933, filed in the District Court its answer to the original bill and included in such answer a motion to dismiss. The answer is as follows:

(k) Insert answer, including motion to dismiss.
(l) Insert motion of complainant to amend original bill.
(m) Insert amendment to bill of complaint prefaced by the following statement:

"Attached to and filed with the motion to amend was the following proposed amendment":

(n) Insert objections to amendment.
(o) Insert order overruling motion to amend.
(p) Insert motion for setting of cause and affidavit attached thereto.
[fol. 121] (q) Insert motion of complaint to amend original bill and proposed amendments.

(r) Insert objections to amendment to original bill of complaint.

(s) Insert motion of complainant for separate conclusions of law followed by this statement:

"It is agreed by counsel for complainant and defendant, and the record may so show, that when the District Court announced orally that the motion to dismiss would be sustained, counsel for complainant called to the Court's attention the motion theretofore filed for separate conclusions of law and thereupon the District Judge directed counsel for defendant in preparing the final decree to include such conclusions of law therein.

"That thereafter counsel for defendant prepared the final decree, submitted it to counsel for complainant, and to the District Judge and the District Judge signed the same in the presence of counsel for complainant and defendant and counsel for complainant made no further objection to the form of the decree and no further motion for additional conclusions of law."

(t) Insert final decree disallowing amendments and dismissing original bill.

(u) Insert petition for appeal.

(v) Insert assignment of errors.

[fol. 122] (w) Insert order allowing appeal and fixing bond.

(x) Insert appeal bond.

(y) Insert waiver of citation and entry of appearance of defendant.

(z) Insert præcipe.

In order to shorten the præcipe, the above in the form indicated may be designated therein as "Agreed record".

It is further agreed that neither party is precluded by the foregoing from including other papers in their præcipe, this agreement being merely to shorten the record as above indicated.

This the 10 day of April, 1935.

Marshall W. Amis, J. C. Floyd, Attorneys for Complainant, Plaintiff in Error. Bozeman & Cameron, Wilbourn, Miller & Wilbourn, A. S. Bozeman, R. E. Wilbourn, Attorneys for Defendant, Defendant in Error.

[fol. 123] IN UNITED STATES DISTRICT COURT

PRÆCIPE—Filed April 11, 1935

To the Hon. B. L. Todd, Jr., United States District Clerk:

In making up the record on appeal in the foregoing case, please insert the following:

1. Agreed record as per agreement of counsel.

Marshall W. Amis & J. C. Floyd, Counsel for Complainant, Plaintiff in Error.

We acknowledge receipt of a copy of the foregoing præcipe and waive formal service of same.

This the 10 day of April, 1935.

Bozeman & Cameron, Wilbourn, Miller & Wilbourn, Counsel for Defendant, Defendant in Error.

In United States District Court

Waiver of Citation and Service Thereon and Entry of Appearance—Filed April 11, 1935

The complainant, plaintiff in error, J. B. Gully, State Tax Collector, having filed in the District Court of the United States for the Eastern Division of the Southern District of [fol. 124] Mississippi his petition for an appeal from the decree rendered herein against him on the 27th day of March, 1935, together with an assignment of errors, order of the Judge of said District Court allowing said appeal, and his appeal bond in the penalty of Five Hundred Dollars ($500.00).

The said defendant, First National Bank in Meridian, does hereby waive the issuance and service of citation on said appeal and enters its appearance in the Circuit Court of Appeals of the Fifth Circuit in New Orleans, Louisiana, to which the said appeal is prosecuted, as of thirty days from this date to show cause, if any there be, why the decree appealed from should not be corrected and speedy justice done the parties in that behalf.

This the 10th day of April, 1935.

First National Bank in Meridian, by Bozeman & Cameron, Wilbourn, Miller & Wilbourn, Its Attorneys.

[fol. 125] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 126] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of January 7th, 1936

No. 7767

JAMES B. GULLY, State Tax Collector,

versus

FIRST NATIONAL BANK IN MERIDIAN

On this day this cause was called, and, after argument by J. C. Floyd, Esq., and Marshall W. Amis, Esq., for appellant, and R. E. Wilbourn, Esq., for appellee, was submitted to the Court.

[fol. 127] OPINION OF THE COURT—Filed January 18, 1936

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7767

JAMES B. GULLY, State Tax Collector, Appellant,

versus

FIRST NATIONAL BANK IN MERIDIAN, Appellee

Appeal from the District Court of the United States for the Southern District of Mississippi

(January 18, 1936)

Before Foster, Sibley and Walker, Circuit Judges

SIBLEY, Circuit Judge:

During 1930 the First National Bank of Meridian did business in Meridian, Miss. It suspended Jan. 13, 1931, and was put into a receiver's hands. He transferred most of

the assets to the newly organized First National Bank in Meridian on June 4, 1931. The State Tax Collector on Aug. 1st, 1933, sued the latter bank, which we will distinguish as the new bank, for State, county and municipal taxes for 1930, assessed on returns made by the old bank, he asserting that the new bank had agreed to pay them in its pur- [fol. 128] chase of the assets of the old bank. The suit, brought in a State court, was by the new bank removed to the federal court on two grounds: That the suit arose under the laws of the United States, and that it was one for winding up the affairs of a national bank. Remand was denied. The petition was dismissed as showing no cause of action after two amendments were refused. The State Tax Collector appeals, assigning as error the refusal to remand, the refusal of the amendments, and the dismissal of the suit.

Each assignment requires an understanding of the allegations of the original petition. In addition to the general facts above stated, it sets forth in great detail the laws of the State and the charter powers of the city and school district involved but makes no special mention of any law of the United States. The petition asserts that the old bank was a national banking association organized under the laws of the United States and was subject to taxation by the State, county, city and school district where it did business, that it made a return during 1930 in its own name for State and county taxes thus: "Bank's capital stock, surplus and undivided profits less book value of real estate $540,-135. Total valuation of all personal property $540,135", and that the proper tax officers included in the assessment roll in those words that valuation of the capital, surplus and undivided profits of said bank, and that State and county taxes at rates fixed for the year were assessed in named amounts "against said capital stock, surplus and undivided profits of the First National Bank of Meridian." Similarly it is alleged that the old bank made a report to the city tax assessor of Meridian "of the number and amount of all the shares of its capital stock paid in and of the sum of all undivided profits, surplus and accumulation of every sort excluding its real estate" upon which there was entered upon the city assessment roll this: "First National Bank, 2600 shares capital stock, $260,000; surplus [fol. 129] and undivided profits, $313,890; (total), $573,890;

less real estate, $33,700, $540,190. Total value of all personal property $540,190; total tax on same $13,504.75." This figure included city and school taxes. The allegation is made that all these taxes were due by the bank's shareholders, but the bank was by law made liable to pay them as the shareholders' agent, and might charge them to the shareholders, and had in hand until Jan. 13, 1931, available funds belonging to the shareholders to protect it in so doing, but had failed and neglected to make payment on December 1st, 1930, when payment was due, and it became thereby directly and primarily liable for the taxes. It is alleged that on January 13, 1931, the old bank "became insolvent, suspended business and was thereafter duly liquidated by a receiver appointed by the Comptroller of the Currency." The contract of sale of the assets by the receiver to the new bank is exhibited. In a preliminary "whereas" clause it recites that the new bank as part of the consideration "will assume and pay in full, with interest, the claims of all other creditors against said suspended bank, whether said claims be known or unknown, which may be duly established according to law, and in addition will assume and pay in full all expenses of the receivership of said suspended bank both accrued and to accrue." In the formal agreement which follows the language is that the new bank will, besides surrendering numerous claims held by it under a creditors' agreement supposed to be over 90% of all claims, "pay $297,888.78, representing the amount necessary to pay all receivership expenses accrued and to accrue, and to enable the receiver to pay in full with interest to the date of payment the claims of all known creditors who have not executed the aforesaid creditors' agreement • • • and the said purchaser will pay the receiver such further sums from time to time during the period of active receivership as the receiver may deem necessary to meet receivership expenses and to provide for the payment of such un- [fol. 130] listed or unknown claims as may be established during the period of active receivership." The final allegation is that the new bank thereby became liable for these taxes and the prayer is for a personal decree.

Is this a suit arising under the laws of the United States? Although the new bank is alleged to be liable because of its contract, yet the State Tax Collector must and does assert also a tax claim collectible from the old bank. This in turn

necessarily involves a construction and application of the laws of the United States, because the old bank was a national bank. It is thoroughly settled that a national bank is an instrumentality of the federal government, and that a State and its subdivisions are wholly without any power, solely by virtue of State law to levy any tax, direct or indirect, upon such banks, their property, their franchises or the shares of their stock. The only authority to levy any such tax comes from the laws of Congress now expressed in 12 U. S. C. A. § 548. McCulloch vs. Maryland, 4 Wheat. 316; Owensboro National Bank vs. Owensboro, 173 U. S. 664; First National Bank of Gulfport vs. Adams, 258 U. S. 362; Des Moines National Bank vs. Fairweather, 263 U. S. 103; First National Bank of Guthrie vs. Anderson, 269 U. S. 341; and see Domenech vs. National City Bank, 294 U. S. 199. We recognize the rule that for a suit to arise under the Constitution or laws of the United States it must so appear in the allegations of the petition, and that the rule thus stated touching the original jurisdiction of the District Court is to be applied also to a removal for this cause under the present removal statute, 28 U. S. C. A. § 71. State of Tennessee vs. Union & Planters Bank, 152 U. S. 454; Minnesota vs. Northern Securities Co., 194 U. S. 48. We recognize also the rule that it is not enough that some defense is to be asserted which arises under such Constitution or laws. Taylor vs. Anderson, 234 U. S. 74. But Sect. 548 is not a limitation placed by the federal laws upon an antecedent right of the State to tax national banks, so as to be con- [fol. 131] sidered only a weapon of defense against such taxation. Both in form and in substance it is a grant of authority to State legislatures to tax such banks, limiting them, however, to one of three forms of taxation: either of the shares, or of the dividends from them included in the shareholder's taxable income, or of the income of the bank. The last form only is a tax against the bank. As to the first two forms of taxation, the section says that where nonresidents of the State own the shares or income, taxation of them shall be where the bank is located, and "such associations shall make return of such income and pay the tax thereon as agent of such nonresident shareholders." This very plainly indicates, both as to resident and nonresident shareholders, that the tax is on the shareholder and not on the bank, which in any case may, and in case of nonresident

shareholders must, act as agent of the shareholders in making return and paying the tax. The law of Mississippi Code of 1930, § 3138, adopts the plan of taxing the shares both in State and national banks on a return to be made by the president or cashier; adding "Each said bank and banking association shall nevertheless be liable to pay any taxes as agent of each of its shareholders and may pay the same out of their individual profit account, or charge the same to their expense account or to the account of such shareholder in proportion to their ownership." Without stopping to construe these provisions further than to say that they plainly pursue the permission of Sect. 548 to tax the shares of the shareholders, we assert that as to a national bank the state statute depends for its force on this law of the United States. A pleader need in general not plead any law, but only the facts on which he relies. When a petitioner is claiming federal jurisdiction he usually and properly points out the federal law on which he relies. But he cannot, by omitting reference to the law of the United States by virtue of which alone the facts pleaded could avail [fol. 132] to support the relief which he seeks, escape the jurisdiction of the federal courts over his suit when invoked by a petition for removal. Irrespective of the merit of his claims, the present suit of the State Tax Collector, insofar as it involves the assertion of a valid State tax against the old bank or against the shares of its stock, necessarily depends upon an application of the laws of the United States and arises under them. See Spokane Falls Ry. Co. vs. Zeigler, 167 U. S. 65; Hall vs. C., R. I. & P. R. R. Co., 149 Fed. 664. In Texas & Pacific Ry. Co. vs. Cody, 166 U. S. 606, judicial notice that the defendant Railway Company was a corporation organized under the laws of the United States was taken in order to sustain removal. Postal Tel. & Cable Co. vs. Alabama, 155 U. S. 482, has only a superficial likeness to this case. There the State was suing for taxes imposed by the independent authority of the State and not by federal authorization. That the present suit involves also a question of the liability of the new bank under its contract does not defeat jurisdiction. Jurisdiction because of a federal question persists irrespective of the decision made of that question, and even though it may be unnecessary to decide it at all, the case turning finally

on questions of State law. Green, Auditor, vs. Louisville Interurban R. R. Co., 244 U. S. 499.

On the other hand this is not a "case for winding up of the affairs of a national bank" of which the District Court is given jurisdiction by 28 U. S. C. A. § 41 (16). The agreement with the receiver, presumably duly authorized, disposed finally of the assets transferred by it. If the contention of the State Tax Collector is sound that it gave him a direct right of action against the new bank, the assertion of that right is merely a suit against the new bank on its contract and not one to wind up the affairs of the old bank. Compare Moulton vs. National Farmers Bank, 27 Fed. (2d) 403. Therefore, though the second ground for removal is [fol. 133] not well taken, the first ground holds good. The case was properly removed, and remand was properly refused.

Turning to the merits, the petition fails to set forth a cause of action against the new bank. The assessments above set forth speak for themselves, and cannot be altered by alleging legal conclusions about them. They assessed no shareholder and no share of stock, but undertook to assess the bank on the value of its assets other than real estate. The assessment for State and county taxes does not so much as mention shares. That for city taxes refers to the number of shares, but at last the valuation and assessment is of "all personal property" of the bank. The lien for taxes established by Mississippi Code, §3120, upon property assessed would attach to the personal property of the bank and not the shares of the stockholders. A similar assessment of the personal property of a national bank in Mississippi, although approved by the State Supreme Court, was held illegal in First National Bank of Gulfport vs. Adams, 258 U. S. 363. But, it is argued, that decision was rendered on a direct and timely attack upon the assessment, and in the absence of a return by the bank, whereas here the attack is collateral and the assessment followed a voluntary return by the bank and has been acquiesced in until after the bank's failure, which should estop the bank to question it. Whether a solvent bank may thus bind itself we do not inquire. The question here, as we shall show, is whether the receiver of an insolvent bank is bound, and it must be answered in the negative. In permitting State taxation of national banks Congress has not granted the

right to tax the bank on its personal property. One purpose was probably to preserve it for the creditors in case of insolvency. After insolveney the personal property cannot be taxed in the receiver's hands. Rosenblatt vs. Johnston, 104 U. S. 462. To compel the receiver to pay taxes which can lawfully be imposed only upon the shareholders and their [fol. 134] shares would be to take money from the creditors to pay obligations due by the shareholders, and is inadmissible. Stapylton vs. Thaggard, 91 Fed. 93; City of Boston vs. Bell, 51 Fed. 306, affirmed 55 Fed. 26; Brown vs. French, 80 Fed. 166; Baker vs. King County, — Wash. —, 50 Pac. 481. This view of the matter would prevent the receiver from paying these taxes out of the bank's assets, even had proper assessment been made against the shares and their owners. And it answers the further contentions of the State Tax Collector that the Mississippi Code, §3138, requires the bank to pay the tax on the shares with a right to charge it to the shareholders, and that Sect. 3122 makes "every lawful tax assessed, levied or imposed by the State or a county or municipality * * * a debt due by the person or corporation owning the property * * * upon which the tax is imposed, whether properly assessed or not * * * and may be recovered by action." A tax on the personal property of the bank has not been and cannot be lawfully assessed or imposed; and while a tax lawfully imposed on the shares according to Sect. 3138 may be required to be paid by the bank as agent for the shareholders so long as the bank is a going concern and can have a real recourse on the shareholders, as is held in First National Bank vs. Chehalis County, 166 U. S. 440; Van Slyke vs. Wisconsin, 154 U. S. 581, and First National Bank vs. Kentucky, 9 Wall. 353; insolvency ends the statutory agency to pay and the personal assets of the bank cannot thereafter be taken from creditors to pay the shareholders' debt.

We have assumed that the new bank can be held only for obligations that could have b n enforced against the receiver of the old bank. This we think is the correct interpretation of the contract. The preliminary recital as heretofore quoted is quite broad, but the contracting clause is specific and should be held to measure more exactly the [fol. 135] obligation assumed. That obligation is to pay a fixed sum to cover the claims referred to in the recital, and in addition to pay to the receiver such sum as the re-

ceiver may deem necessary to meet additional receivership expenses and to pay such unknown claims as "may be *duly established during the period of active receivership.*" Assuming, as is asserted, that in Mississippi, a third person for whose benefit a promise is made may enforce it by a direct suit against the promisor, the promise can be enforced only according to its terms. The tax claim here asserted is not shown to be one that was or could have been duly established against the receiver during the active receivership and which he could have called upon the new bank to pay.

One amendment offered and rejected elaborated some of the ideas already discussed, making express reference to the laws of the United States as relied upon by the petitioner. It alleged also that for several years the old bank had returned its property and been assessed just as in 1930 and had paid the taxes, whereby an estoppel was claimed to deny liability for the year 1930. We find no ground for an estoppel, especially as against the receiver. Brown vs. French, 80 Fed. 166. The amendment also set up that the stockholders of the old bank had assigned their shares for the benefit of the new bank under an agreement with an organization committee that the assignors "be relieved and held harmless from any and all statutory liability as a shareholder of the First National Bank of Meridian, Mississippi." It is not pleaded how the new bank became bound by the contract of the committee, but if bound, we think the reference was not to back taxes which the shareholders might owe on their stock, but to their liability to be assessed on the stock to pay the bank's debts under 12 U. S. C. A. § 64. Moreover, there is no assumption, but only an agreement to hold harmless, which would not justify a direct suit by the holder of an obligation. This amendment set up no better cause of action.

[fol. 136] Another amendment sought to add as parties the old bank and certain individuals who under the creditors' agreement were made trustees for a large amount of frozen assets to manage and collect them, from the proceeds of which the shareholders might eventually get something; and judgment was prayed against the old bank and the interest of the shareholders in the fund thus put with the trustees. Irrespective of the merit of the claims asserted against the old bank and the trustees, the amendment was

not germane to the original suit against the new bank and there was no error in rejecting it.

The judgment of the District Court is in all respects affirmed.

[fol. 137] JUDGMENT

Extract from the Minutes of January 18th, 1936

No. 7767

JAMES B. GULLY, State Tax Collector,

vs.

FIRST NATIONAL BANK IN MERIDIAN

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Mississippi, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellant, James B. Gully, State Tax Collector, and the surety on the appeal bond herein, United States Fidelity & Guaranty Company, be condemned, in solido, to pay the costs of this cause in this Court.

[fol. 138] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 126 to 137 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for

the Fifth Circuit, in a certain cause in said Court numbered 7767, wherein James B. Gully, State Tax Collector is appellant, and First National Bank in Meridian is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 125 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 15th day of February, A. D. 1936.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 139] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 18, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted, limited to the question of the jurisdiction of the District Court.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: Enter J. C. Floyd. File No. 40,465. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 29. James B. Gully, State Tax Collector for the State of Mississippi, petitioner, vs. First National Bank in Meridian. Petition for a writ of certiorari and exhibit thereto. Filed April 10, 1936. Term No. 29, O. T. 1936.